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16457) DOCID: 70106674

1992

INDIAN AFFAIRS
May Thru December 1992

DOJ EXECUTIVE SECRETARIAT CROSS-REFERENCE RECORD



CONTROL NUMBER: 92121717878

INOUE, DANIEL K., SENATOR

THE ENTIRE DOCUMENT PACKET FOR THE CONTROLLED
CORRESPONDENCE INDICATED BY THE ABOVE EX.SEC.
CONTROL NUMBER HAS BEEN FILED IN THE FOLLOWING
PRIMARY FILE LOCATION WITHIN THE SUBJECT FILES
OF THE ATTORNEY GENERAL.

PRIMARY FILE: PETITION

25 November 1992

DEPARTMENT OF JUSTICE
EXECUTIVE SECRETARIAT CONTROL DATA SHEET

From: SANCHEZ, DORIAN S., NISQUALLY INDIAN TRIBE, OLYMPIA, WA
To: AG. ODD: 10-30-92
Date Received: 10-15-92 Date Due: 11-18-92 Control #: X92101615145

Subject & Date

10-06-92 LETTER EXPRESSING HER CONCERN WITH REGARD TO THE
ACTIONS TAKEN BY DOJ AND U.S. ATTORNEY MIKE MCKAY,
W.D. OF WA, IN CONNECTION WITH THE TRIBE'S REQUEST OF
JULY 1990 FOR THE RECONSIDERATION OF A POSITION BY THE
U.S. ATTORNEY AS TO CRIMINAL JURISDICTION ON THE NISQUALLY
RESERVATION. CLAIMS THEY HAVE NEVER RECEIVED A RESPONSE TO
THEIR REQUEST AND FEEL THAT THE TOTAL FAILURE BY DOJ AND
THE U.S. ATTORNEY TO COMMUNICATE WITH THE TRIBE **

	Referred To:	Date:	Referred To:	Date:	
(1)	EOA;MCWHORTER	10-16-92	(5)		W/IN:
(2)			(6)		
(3)			(7)		PRTY:
(4)			(8)		1Z
	INTERIM BY:		DATE:		OPR:
	Sig. For: EOA		Date Released: 12-11-92		MAU

Remarks

** DEMONSTRATES A COMPLETE DISREGARD FOR THE SOVEREIGN
OBLIGATIONS OF THE TRIBE TO PROTECT THE NISQUALLY PEOPLE.
(NO PRIOR RECORD OF CORRESPONDENCE IN EXEC. SEC.).

INFO CC: OAG, DAG, CRM.

(1) RETURN CONTROL SHEET WITH COPY OF SIGNED AND DATED
RESPONSE TO EXEC. SEC., ROOM 4400-AA.

Other Remarks:

11-10-92: PER REQ OF EOA/DEFALAISE, DD EXT FROM 10-30-92 TO
11-18-92 BECAUSE MORE TIME IS NEEDED TO GATHER INFO. (EHZ)
12-11-92 EOA REPLIED BY LETTER DATED 12-09-92. (TJ)

OLA CONTACT:

10/19/92 JRH FYI
FILE: INDIAN AFFAIRS

REMOVE THIS CONTROL SHEET PRIOR TO FILING AND DISPOSE OF APPROPRIATELY

6 OCTOBER 92



U.S. Department of Justice

*Executive Office for United States Attorneys
Office of the Director*

Main Justice Building, Room 1619
10th & Pennsylvania Avenue, N.W.
Washington, D.C. 20530

(202) 514-2121

DEC 9 1992

Dorian S. Sanchez
Chairman, Nisqually Indian Tribe
4820 She-Nah-Num Drive, S.E.
Olympia, Washington 98503

Re: Your letter of October 6, 1992

Dear Chairman Sanchez:

I have reviewed your letter and consulted with Mike McKay, United States Attorney for the Western District of Washington, regarding the concerns which you voiced. I believe that it is helpful to review the total history of this issue.

On May 12, 1990, Mr. McKay testified before the House of Representatives Committee on Interior and Insular Affairs, Subcommittee on Indian Affairs regarding jurisdiction over the numerous reservations, including the Nisqually Reservation located within his district. In the course of that appearance, he testified that the Nisqually Reservation was subject to the exclusive jurisdiction of the State of Washington. His statement was based upon the tribe's request, pursuant to P.L. 280, for the State of Washington to assume jurisdiction over reservation lands.

Shortly after this testimony, Mr. McKay's office became involved in an investigation of an alleged sexual assault occurring on the "after-acquired" portion of the Nisqually Reservation. In the course of the investigation, David R. Lundgren, your tribal attorney, provided a lengthy letter detailing the tribe's position on jurisdiction over the "after-acquired" portion of the reservation. Because of the tribe's contradictory position on jurisdiction, a request was made to the Department of Justice for a formal legal opinion as to proper jurisdiction over the "after-acquired" lands.

During this period, both the Assistant United States Attorney handling the matter and his supervisor discussed the factual and jurisdictional difficulties with Mr. Lundgren. The Department's opinion concurred with Mr. McKay's opinion that the State of Washington had jurisdiction over the entire Nisqually

Reservation including the "after-acquired" lands. The opinion went on to state that an argument could be made that the federal government had retained concurrent jurisdiction over reservation lands.

Mr. Lundgren was advised by a supervisory Assistant United States Attorney that Federal prosecutors were prepared to argue that the "after-acquired" lands were subject to federal jurisdiction. However, because of the vagaries of the state double jeopardy clause, it would be prudent to pursue state jurisdiction initially. Otherwise, a successful attack on federal jurisdiction could lead to the inability to pursue the prosecution of state court. The jurisdictional issue became moot in that matter when factual problems could not be overcome. The ultimate goal throughout the investigation was to preserve the viability of all options for prosecuting a potentially guilty defendant.

Because the jurisdictional issue was raised within the confines of a specific case and the jurisdictional alternatives were discussed with the Tribal Attorney in that context, the United States Attorney felt that tribal concerns had been considered and a considered response given. Both the Department of Justice and the United States Attorney have reviewed and considered the tribe's position on the issue of jurisdiction on the "after-acquired" lands. Solely as a legal matter, the Department does not agree with the tribe's position. This decision was neither meant to be an affront to the Nisqually Tribe nor made with any improper motive. Jurisdiction if incorrectly exercised can mean the end of a meritorious prosecution. The only goal of the United States Attorney and the Department of Justice was and is to ensure that justice is accomplished.

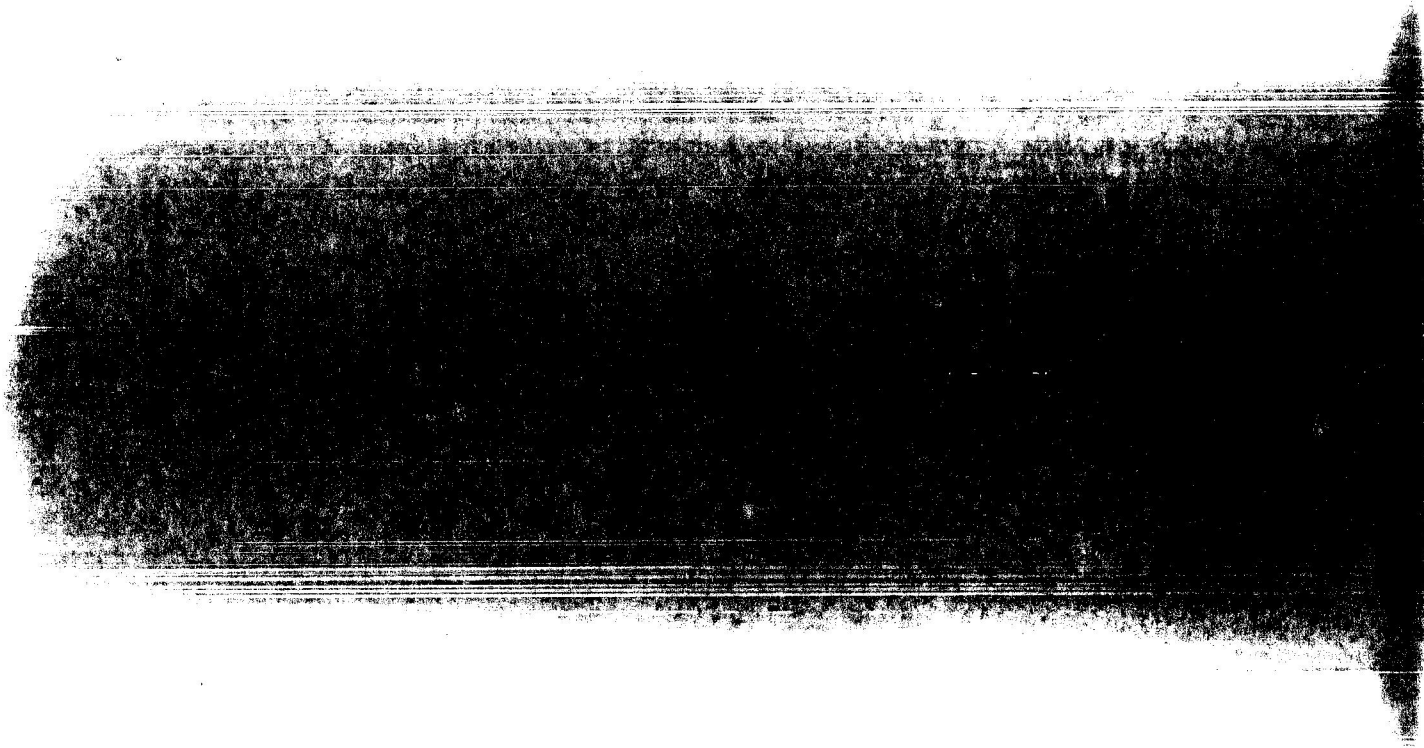
In March 1992, the Thurston County Sheriff's Department was undergoing re-accreditation. As a part of this process, the Sheriff's Department was required to affirmatively establish its jurisdiction on all land within the county's boundaries. In response to an inquiry by the Sheriff's Department, a copy of the written opinion from the Department of Justice was provided.

United States Attorney Mike McKay indicated that he has always sought to be open to and work with the Nisqually Indian Tribe. He believed that the responses provided to the Tribal Attorney on the jurisdictional issue during the course of this specific case would serve to inform you in advance of the position that his office would take and create a dialogue to address your concerns. He has also indicated that he would be happy to meet with you on this or any other matter of interest to you.

In conclusion let me assure you if there was a failure of communication between the Tribe and either the United States Attorney's Office or the Department of Justice it was unintentional and the Department regrets any negative impression this may have caused.

Sincerely,

Anthony C. Moscato
Anthony C. Moscato
Acting Director





Nisqually Indian Tribe
4820 She-Nah-Num Drive S.E.
Olympia, Washington 98503
Phone: (206) 456-5221

October 6, 1992

The Honorable William P. Barr
Attorney General of the United States
Department of Justice
10th & Constitution Avenue, N.W.
Washington, D.C. 20530

Dear Mr. Barr:

The Nisqually Indian Tribe directed its attorney in July of 1990 to share a comprehensive legal analysis with the Office of the United States Attorney in Seattle and to request reconsideration of a position U.S. Attorney Mike McKay had taken as to criminal jurisdiction on the Nisqually Reservation. We have never received a response to that request. However, we just learned that the Department of Justice prepared and sent to Mr. McKay's office in July of 1990 a memorandum of the Department's position as to jurisdiction on the Nisqually Reservation. We also just learned that the memorandum has been shared with local county officials by Mr. McKay's office.

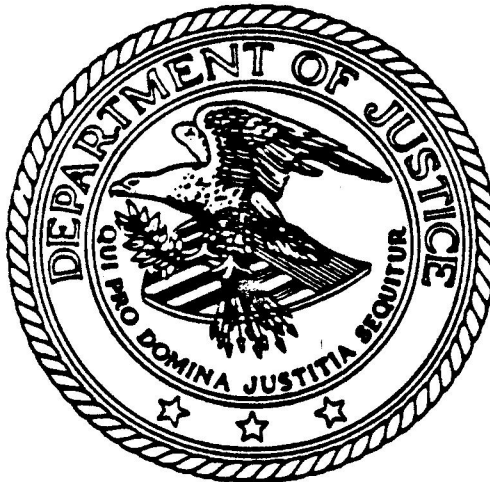
The Nisqually Tribe, with whom Justice has a fiduciary relationship, is deeply offended by the complete lack of respect shown the Tribe on this matter. The Nisqually Tribe has maintained a commitment to its people to provide full law enforcement services on the Nisqually Reservation. The total failure of the Department and the U.S. Attorney to communicate with the Tribe on this most important governmental matter demonstrates a complete disregard for the sovereign obligations of the Tribe to protect the Nisqually people. Why was this dishonorable action allowed to happen?

Sincerely,

Dorian S. Sanchez
Chairman

cc: Washington Congressional Delegation
Senate Select Committee on Indian Affairs

DOJ EXECUTIVE SECRETARIAT CROSS-REFERENCE RECORD



CONTROL NUMBER: 92120217210

DASCHLE, TOM, SENATOR
JOHNSON, TIM, CONGRESSMAN

THE ENTIRE DOCUMENT PACKET FOR THE CONTROLLED
CORRESPONDENCE INDICATED BY THE ABOVE EX.SEC.
CONTROL NUMBER HAS BEEN FILED IN THE FOLLOWING
PRIMARY FILE LOCATION WITHIN THE SUBJECT FILES
OF THE ATTORNEY GENERAL.

PRIMARY FILE: LITIGATION/Sisseton-Wahpeton Sioux
Tribe et al v. U.S.
24 November 1992

DEPARTMENT OF JUSTICE
EXECUTIVE SECRETARIAT CONTROL DATA SHEET

From: BOURLAND, GREGG, CHEYENNE RIVER SIOUX TRIBE, EAGLE BUTTE, SD
To: AG. AND STARR, KENNETH, OSG ODD: 11-05-92
Date Received: 10-21-92 Date Due: 11-05-92 Control #: X92102215398
Subject & Date

10-20-92 LETTER (FAX), ON BEHALF OF THE CHEYENNE RIVER SIOUX
TRIBE, FORMALLY REQUESTING ASSISTANCE FROM DOJ IN THE CASE
"STATE OF SOUTH DAKOTA v. BOURLAND," --- U.S. ---, 61
U.S.L.W. 3005, 3218 3256 (1992), CONCERNING TRIBAL POWER TO
REGULATE HUNTING AND FISHING BY NON-INDIANS ON FORMER TRUST
LANDS ACQUIRED BY THE UNITED STATES UNDER THE CHEYENNE RIVER
ACT. ADVISES THAT THE SUPREME COURT GRANTED CERTIORARI IN
THIS CASE ON OCTOBER 5, 1992.

	Referred To:	Date:	Referred To:	Date:	
(1)	OSG;STARR	10-22-92	(5)		W/IN:
(2)			(6)		
(3)			(7)		PRTY:
(4)			(8)		1
	INTERIM BY:		DATE:		OPR:
	Sig. For: OSG		Date Released: 11-30-92		EHZ

Remarks

INFO CC: OAG, DAG, ASG, ENR.

(1) RETURN CONTROL SHEET W/COPY OF SIGNED AND DATED RESPONSE
TO EXEC. SEC., ROOM 4400-AA.

10-30-92: ODAG REINHARDT REQUESTED COPY. BJ

11-30-92. OSG (BRAMMER) CHECKED WITH KNEEDLER ON THIS
MATTER. SHE WAS ADVISED THAT NO RESPONSE WOULD BE MADE
UNTIL THIS ISSUE WAS RESOLVED. (LH)

Other Remarks:

OLA CONTACT:

10/23/92 JRH FYI; 10/30/92 CC TO TTR PER HIS REQUEST
FILE: INDIAN AFFAIRS

REMOVE THIS CONTROL SHEET PRIOR TO FILING AND DISPOSE OF APPROPRIATELY

C/o 20 October 92

10/20/92 11:01

805 964 4151

CRST TRIBAL OFC

002/003

CHAIRMAN

Gregg J. Bourland

SECRETARY

Arlene Thompson

TREASURER

Johanna High Bear

VICE-CHAIRMAN

Vernon Mestas



P.O. Box 590
Eagle Butte, South Dakota 57625
(805) 964-4155
Fax (805) 964-4151

October 20, 1992

Hon. William P. Barr
Attorney General
Department of Justice
Main Justice Building, Rm. 5111
Constitution Ave. between 9th and 10th St.
Washington, D.C. 20530

Hon. Kenneth W. Starr
Solicitor General
Department of Justice
Main Justice Building, Rm. 5143
Constitution Ave. between 9th and 10th St.
Washington, D.C. 20530

Re: State of South Dakota v. Bourland, --- U.S. ---, 61
U.S.L.W. 3005, 3218, 3256 (1992)

Dear Attorney General Barr and Solicitor General Starr:

Please consider this letter a formal request from the Cheyenne River Sioux Tribe to the United States Department of Justice for assistance in the above referenced case.

On October 5, 1992, the Supreme Court granted certiorari in South Dakota v. Bourland, supra. The case is of great import to the Cheyenne River Sioux Tribe because it concerns tribal power to regulate hunting and fishing by non-Indians on 105,000 acres of former trust lands, which were acquired by the United States under the Cheyenne River Act.

Pursuant to the Act, the Tribe retains substantial interests in the federal "taking lands:" mineral rights, grazing rights, timber rights, and hunting and fishing rights. In addition, the continued exercise of tribal authority in the area is consistent with the twin purposes of the Cheyenne River Act: 1) acquisition of lands for flood control; and 2) rehabilitation of the Indians of the Cheyenne River Reservation after the taking of their best lands.

The blue represents the thunder clouds above the world where live the thunderbirds who control the four winds. The rainbow is for the Cheyenne River Sioux People who are keepers of the Most Sacred Calf Pipe, a gift from the White Buffalo Calf Maiden. The eagle feathers at the edges of the rim of the world represent the spotted eagle who is the protector of all Lakota. The two pipes fused together are for unity. One pipe is for the Lakota, the other for all the other Indian nations. The yellow hoops represent the Sacred Hoop, which shall not be

TRIBAL COUNCIL MEMBERS

DISTRICT 1

Raymond Lines The Kalle Jr.
Vernon Mestas

DISTRICT 2

Ted Kalle Sr.

DISTRICT 3

Marynard Dupris
Ed Widow

DISTRICT 4

Robert Lutton Sr.
Rocky LaCompte
Orville LaPlante
Frank Thompson

DISTRICT 5

Gilbert Marshall
Marion LaBeeu
Robert Cheezy Hawk
Terry Pickler

DISTRICT 6

Calvin "Red" Towner
Jean LaBeeu

EXECUTIVE SECRETARIAT

92 OCT 21 AM 09

DEPARTMENT OF JUSTICE

RECEIVED

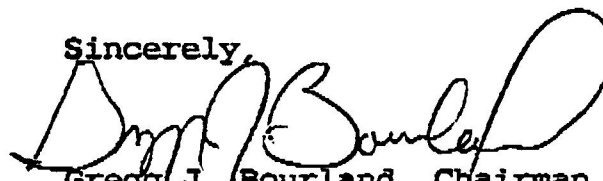
Attorney General Barr and Solicitor General Starr
October 20, 1992
Page Two

Nevertheless, the State of South Dakota seeks to extend the holdings of Montana v. United States, 450 U.S. 544 (1981), and Brendale v. Yakima Indian Nation, 492 U.S. 408 (1989), which held that Indian tribes are divested of authority to regulate hunting and fishing on fee patent lands sold to non-Indians under the General Allotment Act, to the present case where former trust lands were acquired by the United States for the limited purpose of flood control. Thus, the case has great national import for Indian tribes.

The Department of Justice assisted the Tribe through briefs in the District Court for South Dakota and through briefing and oral argument in the Eighth Circuit Court of Appeals, resulting in a unanimous decision by the Eighth Circuit panel. 949 F.2d 984 (1991). Accordingly, the Tribe requests continued assistance from the Department of Justice in the Supreme Court through both briefing and argument.

Thank you for your kind consideration.

Sincerely,



Gregg J. Bourland, Chairman
Cheyenne River Sioux Tribe

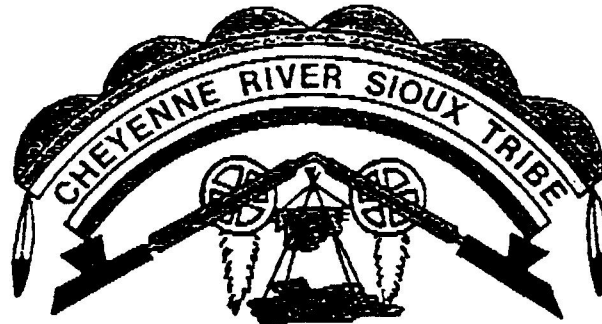
cc: Steven C. Emery, Esq.
Mark C. Van Norman, Esq.
Timothy W. Joranko, Esq.
Scott B. McElroy, Esq.

CHAIRMAN
Gregg J. Bourland

SECRETARY
Arlene Thompson

TREASURER
Johanna High Bear

VICE-CHAIRMAN
Vernon Mestas



P.O. Box 590
Eagle Butte, South Dakota 57625
(605) 964-4155
Fax (605) 964-4151

TELEFAX TRANSMISSION SHEET

TRIBAL COUNCIL MEMBERS
DISTRICT 1
Raymond Uses The Knife Jr.
Vernon Mestas

DISTRICT 2
Ted Knife Sr.

DISTRICT 3
Maynard Dupris
Ed Widow

DISTRICT 4
Robert Latham Sr.
Rocky LeChapelle
Orville LaPlante
Frank Thompson

DISTRICT 5
Albert Marshall
Marcelle LeBeau
Robert Chasing Hawk
Terry Fiddler

DISTRICT 6
Calvin "Red" Tawapala
John LeBeau

DATE 10-20-92

TO: Hon William P. Barr
Attorney General

FAX NO: (202) 514-4371

FROM: Mark Van Norman, Esq.

FAX NO: 605-964-4151

NUMBER OF PAGES (including cover page) 3

TELEFAX OPERATOR: PATSY

COMMENTS: _____

PLEASE NOTIFY US IMMEDIATELY IF THERE HAS BEEN ANY PROBLEM
RECEIVING THIS TELECOPY:

CHEYENNE RIVER SIOUX TRIBE
STEVEN C. EMERY, ATTORNEY GENERAL
MARK C. VAN NORMAN, TRIBAL ATTORNEY
TIMOTHY W. JORANKO, TRIBAL ATTORNEY
(605) 964-6686 - 964-6687

FOIA # 60048 (URTS 16457) DocId: 70106674 Page 12

NARA-18-1003-A-002552

AMERICAN
OVERSIGHT

The blue represents the thunder clouds above the world where live the thunderbirds who control the four winds. The rainbow is for the Cheyenne River Sioux People who are keepers of the Most Sacred Calf Pipe, a gift from the White Buffalo Calf Maiden. The eagle feathers at

DEPARTMENT OF JUSTICE
EXECUTIVE SECRETARIAT CONTROL DATA SHEET

From: SPARKS, JOE P., ESQ., SPARKS & SILER, SCOTTSDALE, AZ
To: AG. ODD: NONE
Date Received: 10-08-92 Date Due: NONE Control #: X92100814784
Subject & Date

10-07-92 LETTER (FAX) PROVIDING NOTICE OF THEIR CLIENT'S,
THE INTER TRIBAL COUNCIL OF ARIZONA, INC., INTENT TO FILE
A LAWSUIT IN THE U.S. DISTRICT COURT FOR THE DISTRICT OF
ARIZONA ON THURSDAY, OCTOBER 8, 1992, AT 8:30 A.M., SEEKING
INJUNCTIVE RELIEF REGARDING ANY FURTHER ACTION TAKEN BY
SECRETARY LUJAN, DEPT. OF INTERIOR, IN PURPORTED COMPLIANCE
WITH P.L. 100-696, 102 STAT. 4577 (NOVEMBER 18, 1988),
COMMONLY KNOWN AS THE "ARIZONA-FLORIDA LAND EXCHANGE,"**

	Referred To:	Date:	Referred To:	Date:	
(1)	CIV;GERSON	10-08-92	(5)		W/IN:
(2)	ENR;O'MEARA	10-16-92	(6)		PRTY:
(3)			(7)		1Z
(4)			(8)		OPR:
	INTERIM BY:		DATE:		MAU
	Sig. For: NONE		Date Released:		

Remarks

**IN FURTHERANCE OF A PROPOSED FORM OF "TRUST FUND PAYMENT
AGREEMENT," INCLUDING TERMS SIMILAR TO THOSE TERMS AS
DESCRIBED IN A MEMORANDUM OF UNDERSTANDING (MOU) EXECUTED
ON AUGUST 10, 1992, BETWEEN SECRETARY LUJAN AND
REPRESENTATIVES OF COLLIER DEVELOPMENT CORPORATION, COLLIER
ENTERPRISES, AND BARRON COLLIER COMPANY.
INFO CC: OAG, ASG, ENR.

Other Remarks:

- (1) FOR APPROPRIATE HANDLING.
- (2) PER CIV, PACKAGE WAS FORWARDED TO ENR (DID NOT COME
THRU EXEC. SEC.). (MAU)

OLA CONTACT:

FILE: INDIAN AFFAIRS
LITIGATION/General

REMOVE THIS CONTROL SHEET PRIOR TO FILING AND DISPOSE OF APPROPRIATELY

U10
7 October 92

SPARKS & SILER, P.C.
7503 FIRST STREET
SCOTTSDALE, ARIZONA
85251

'92 OCT -8 A9:02

EXECUTIVE SECRETARY

FAX COVER SHEET

DATE:

Oct. 7, 1992

TO:

William P. BarrFAX
NUMBER:202-514-4371

FROM:

Joe Sparks

SPARKS & SILER, P.C.

FAX
NUMBER:(602) 949-7587

NUMBER OF PAGES:

3

INCLUDING COVER SHEET

DESCRIPTION OF FAX MATERIAL AND COMMENTS :

The information contained in this facsimile message is attorney privileged and confidential information intended only for the use of the individual or entity named above. If the reader of this message is not the intended recipient, or the employee or agent responsible to deliver it to the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please immediately notify us by telephone, and return the original message to us at the above address via the U.S. Postal Service. Thank you.

*** If you do not receive all pages, please call (602) 949-1339.

SPARKS & SILER, P. C.

ATTORNEYS

7803 FIRST STREET

SCOTTSDALE, ARIZONA 85251-4573

(602) 949-1339

JOE P. SPARKS
E. DENNIS SILER
KEVIN T. TENAN
JOHN M. RILEY

October 7, 1992

**COPY TRANSMITTED BY
FACSIMILE TO: 202-514-4371**

William P. Barr
United States Attorney General
10th Street and Constitution Ave. N.W.
Washington, D.C. 20530

Re: Notice of Filing Suit and Request for Equitable Relief

Dear Mr. Barr:

This Firm represents the Inter Tribal Council of Arizona, Inc., a non-profit corporation of nineteen Arizona Indian Tribes, in addition to several of the represented Tribes and individual members of the respective Tribes.

The purpose of this letter is to provide notice to you pursuant to Rule 65(b)(2) of the Federal Rules of Civil Procedure of our clients' intent to file a lawsuit in United States District Court for the District of Arizona on Thursday, October 8, 1992, at 8:30 a.m., seeking injunctive relief regarding any further action taken by the United States Secretary of the Interior, Manuel Lujan, in purported compliance with Public Law 100-696, 102 Stat. 4577 (November 18, 1988), commonly known as the "Arizona-Florida Land Exchange", in furtherance of a proposed form of "Trust Fund Payment Agreement", including terms similar to those terms as described in a Memorandum of Understanding executed on August 10, 1992 between the Secretary of the Interior, Manuel Lujan, and representatives of Collier Development Corporation, Collier Enterprises, and Barron Collier Company.

The equitable relief sought in the form of an initial Temporary Restraining Order and thereafter in the form of a Preliminary Injunction, pendente lite, shall include but not be limited to, the request to enjoin the parties named in the suit including Manuel Lujan, Secretary of the Interior of the United States, his officers, agents, servants, employees, and attorneys, and all persons in active concert or participation with Manuel Lujan including, but not limited to, Barron Collier Company, Collier Development Corporation, Collier Enterprises, the City of Phoenix, the State of Arizona, and Edward J. Derwinsky, in his official capacity as Secretary of Veteran's Affairs.

FOIA # 60048 (URTS 16457) DocId:34166741 Page 15
The equitable relief requested from the Court shall specifically include, but not be limited to, requests to enjoin the parties from:

AMERICAN
OVERSIGHT

NARA-18-1005-A-002555

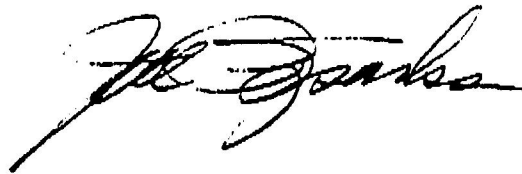
Page 2

1. Executing a Trust Fund Payment Agreement required by Section 403(c)(4) of Public Law 100-696, 102 Stat. 4577 (November 18, 1988) (known as the Arizona-Florida Land Exchange, hereafter "AFLE"), whereby the period of time for closing the Land Exchange Agreement under the AFLE could be postponed at the option of Barron Collier Company, Collier Development Corporation, and Collier Enterprises (herein "the Colliers") for as long as four (4) years after the Trust Fund Payment Agreement is executed;
2. Executing a Trust Fund Payment Agreement under the AFLE without adequate collateral to secure the principal payment due from Colliers in the amount of \$34.9 million for the benefit of Plaintiffs;
3. Executing any Trust Fund Payment Agreement under the AFLE until further hearing and order from the Court.

Attorneys from our Firm will be filing the Complaint and seeking an audience with the Court for entry of a Temporary Restraining Order of the type described above at 8:30 a.m., Thursday, October 8, 1992, at the office of the Clerk of the Court, United States District Court for the District of Arizona, 230 North First Avenue, Phoenix, Arizona.

Yours very truly

SPARKS & SILER, P. C.



Joe P. Sparks

ITC-107-36
ITC-107v36

DEPARTMENT OF JUSTICE
EXECUTIVE SECRETARIAT CONTROL DATA SHEET

From: MCCAIN, SENATOR JOHN

To: AG. (THORNBURGH)

ODD: 10-26-92

Date Received: 09-21-92 Date Due: 10-26-92 Control #: X92092814316

Subject & Date

09-16-92 LETTER ON BEHALF OF J.T. WEEDMAN, DELTA GROUP OF
SETTLEMENT COMPANIES, SHAWNEE, OK, CONCERNING THE PROBLEMS
HE ENCOUNTERED WITH THE PHOENIX U.S. ATTORNEY'S OFFICE
REGARDING HIS PROPOSAL TO HANDLE STRUCTURED SETTLEMENTS FOR
THE GOVERNMENT IN THE ARIZONA AREA. REQUESTS SPECIFIC
INFORMATION.

	Referred To:	Date:	Referred To:	Date:	
(1)	EOA;MCWHORTER	09-28-92	(5)		W/IN:
(2)			(6)		
(3)			(7)		PRTY:
(4)			(8)		2
	INTERIM BY:		DATE:		OPR:
	Sig. For: EOA		Date Released: 12-01-92		YVO

Remarks

ORIGINAL TO AG FILES.

(1) RETURN THIS CONTROL SHEET WITH SIGNED AND DATED
COPY OF THE RESPONSE TO EXEC. SEC., ROOM 4400-AA.

12-01-92: EOA RESPONDED ON 11-25-92. COPY TO AG & LEGIS.
FILES. (MLH)

Other Remarks:

OLA CONTACT:

FILE: INDIAN AFFAIRS

CROSS REFERENCES:

1. EXECUTIVE OFFICE OF U.S. ATTORNEY/U.S. Attorneys
2. SETTLEMENTS/General

REMOVE THIS CONTROL SHEET PRIOR TO FILING AND DISPOSE OF APPROPRIATELY

C/O
16
SEPTEMBER 92



U.S. Department of Justice

Executive Office for United States Attorneys

Office of the Director

Washington, D.C. 20530

NOV 25 1992

The Honorable John McCain
United States Senator
5353 N. 16th Street
Suite 190
Phoenix, Arizona 85016

Attention: Eric Scalzo

Dear Senator McCain:

This responds to your letter on behalf of your constituent, Mr. J. T. Weedman, who has requested information concerning structured settlements and the alleged practice by the United States Department of Justice of referring structures to settlement firms in Washington, D.C.

United States Attorneys select structured settlement companies for only those structures which fall within their authority. In cases where the structured settlement exceeds the authority of the United States Attorney, the Department of Justice, Civil Division, has the final choice in choosing a structured settlement company.

We have contacted the United States Attorney's office for the District of Arizona concerning this matter. We have been advised that neither the Phoenix or Tucson offices have ever used a structured settlement company from Washington, D.C., and in fact, over the past three years, the District of Arizona has used at least five structured settlement companies from the state of Arizona, including Mr. Weedman's Delta Group.

I hope this letter will assist you in responding to your constituent. If I can be of further assistance, please contact my office.

Sincerely,

Anthony C. Moscato
Acting Director

JOHN MCCAIN
ARIZONA

COMMITTEE ON ARMED SERVICES
COMMITTEE ON COMMERCE, SCIENCE,
AND TRANSPORTATION
SELECT COMMITTEE ON INDIAN AFFAIRS
SPECIAL COMMITTEE ON AGING
SELECT COMMITTEE ON POW/MIA AFFAIRS

United States Senate

September 16, 1992

111 RUSSELL SENATE OFFICE BUILDING
WASHINGTON, DC 20510-0303
(202) 224-2235

151 NORTH CENTENNIAL WAY
SUITE 1000
MESA, AZ 85201
(602) 835-8994

5353 NORTH 16TH STREET
SUITE 190
PHOENIX, AZ 85016
(602) 640-2567

5151 EAST BROADWAY
SUITE 170
TUCSON, AZ 85711
(602) 670-6334

TELEPHONE FOR HEARING IMPAIRED
(202) 224-7132
(602) 248-0174

Mr. Thornburgh
Department of Justice
Constitution AVE.
Between 9th and 10th Street
Washington, D.C. 20530

Dear Mr. Thornburgh:

Refer to: 2240750003

I wish to bring to your attention a matter concerning my constituent, J.T. Weedman, who has encountered a problem with structured settlements. Please investigate the statements made in the enclosed letter and return the response to me with the enclosures. MARK ALL CORRESPONDENCE TO:

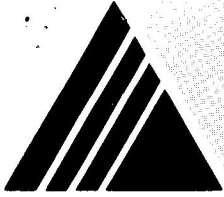
Attn: ERIC SCALZO
Office of Senator John McCain
5353 N. 16th Street
Suite 190
Phoenix, Arizona 85016

The assistance you provide my constituent will be most appreciated. If you should have any questions in the meantime, you can reach my office at (602) 640-2567. I look forward to your reply at your earliest convenience.

Sincerely,


John McCain
United States Senator

JM/xex
Enclosure



DELTA GROUP of SETTLEMENT COMPANIES

Case

July 7, 1992

Ms. Deb Amond
Senator John McCain's Office
Russell Senate Office Building
Room 111
Washington, D.C. 20510

AM

Dear Ms. Amond:

I am writing you in regard to our recent conversation regarding structured settlements and will send requested information concerning myself and The Delta Group under separate cover.

As mentioned, I made a presentation to Assistant United States Attorney John Mayfield in the Phoenix office in March, 1989. Due to the large number of Indian and V.A. hospitals, the United States Attorney's office in Arizona handles a substantial number of medical malpractice claims. Mr. Mayfield was very friendly and as is the normal process we never heard from him. To be very honest, by and large structures are handled for the United States Government through three or four structured settlement firms out of Washington D.C. who are former Justice Department Attorney's and are referred to those cases by the Justice Department in Washington.


It would be my feeling to ask you to do a survey and ask the U.S. Attorney to provide the following information: 1. Over the last three years, how many structured settlements have been used to settle tort claims? 2. What was the cost of the annuities in each settlement? 3. Who was the broker who handled the settlement and what is his address?

We would work with our associate, Mr. Fred Del Gado whose office is in Phoenix. It is our feeling that you would prefer to have someone from Arizona writing these annuities and receiving the commissions rather than someone in Washington D.C. and it should be pointed out that everyone charges the same price and it is not a question of getting a better deal somewhere else.

We appreciate your taking time to talk with us and look forward to having the privilege of meeting you.

Thanking you in advance for your continued interest, I remain

Sincerely,


J.T. Weedman

DOJ EXECUTIVE SECRETARIAT CROSS-REFERENCE RECORD



CONTROL NUMBER: 92083112956

RHODES, JOHN J, III., CONGRESSMAN

(Questions on HR. 4004 Indian Tribal Justice Act)

THE ENTIRE DOCUMENT PACKET FOR THE CONTROLLED
CORRESPONDENCE INDICATED BY THE ABOVE EX.SEC.
CONTROL NUMBER HAS BEEN FILED IN THE FOLLOWING
PRIMARY FILE LOCATION WITHIN THE SUBJECT FILES
OF THE ATTORNEY GENERAL.

PRIMARY FILE: LEGISLATION/HR. 4004

31 AUG 92

DOJ EXECUTIVE SECRETARIAT CROSS-REFERENCE RECORD



CONTROL NUMBER: 92081412201

KASSABAUM NANCY L & NICKLES, DON U.S. Senators
(Attaching Resolution that 5 Tribal Councils be
informed of investigation into the deaths of
native americans in Douglas County KS.)

THE ENTIRE DOCUMENT PACKET FOR THE CONTROLLED
CORRESPONDENCE INDICATED BY THE ABOVE EX.SEC.
CONTROL NUMBER HAS BEEN FILED IN THE FOLLOWING
PRIMARY FILE LOCATION WITHIN THE SUBJECT FILES
OF THE ATTORNEY GENERAL.

PRIMARY FILE: RESOLUTIONS

11 AUG 92

DEPARTMENT OF JUSTICE
EXECUTIVE SECRETARIAT CONTROL DATA SHEET

From: PRESSLER, SENATOR LARRY

To: AG.

ODD: 08-31-92

Date Received: 08-12-92 Date Due: 10-16-92 Control #: X92081712276

Subject & Date

07-22-92 LETTER (REC'D IN EXEC SEC ON 08-12-92)

ENCLOSING A COPY OF A LETTER FROM SOUTH DAKOTA GOVERNOR
GEORGE S. MICKELSON TO ENR IN RESPONSE TO ENR's LETTER
REGARDING THE LIABILITY OF TRIBAL MEMBERS FOR STATE TAXES
AND TRIBAL TAXING AUTHORITY. THE SENATOR REQUESTS SPECIFIC
INFORMATION REGARDING THIS MATTER AND HOPES THAT WAYS CAN
BE FOUND TO RESOLVE INDIAN TAX ISSUES WITHOUT BRINGING
SUIT. **

	Referred To:	Date:		Referred To:	Date:	
(1)	ENR;O'MEARA	08-17-92	(5)			W/IN:
(2)	OLA;RAWLS	09-22-92	(6)			
(3)	ENR;O'MEARA	10-02-92	(7)			PRTY:
(4)	OLA;RAWLS	10-09-92	(8)			1
	INTERIM BY:			DATE:		OPR:
	Sig. For: OLA			Date Released: 10-26-92		YVO

Remarks

** SEE E.S. 92070810290 - COPY OF CONTROL SHEET ATTACHED.
EXEC SEC SENT COPIES TO OAG, OAG (STEVENS), DAG, ASG,
OLA (DeSANCTIS). ORIGINAL TO AG FILES.
(1) PREPARE RESPONSE FOR AAG/OLA SIGNATURE AND RETURN TO
EXEC. SEC., ROOM 4400-AA, WITH COPY OF INCOMING
CORRESPONDENCE, FOR TRANSMITTAL TO OLA.
(2) ENR LETTER FOR SIGNATURE. YEW

Other Remarks:

(3) RETURNED FOR REVISIONS. RETURN TO EXEC. SEC.,
ROOM 4400-AA. WITH MARKED UP COPY. (MMH)
(4) ENR REVISED LETTER FOR SIGNATURE. YEW
10-26-92: AAG RAWLS SIGNED LTR DATED 10-26-92 IN E.S. AND
MAILED FROM E.S. COPIES TO ENR, AG & LEGIS FILES. YEW
OLA CONTACT: JOE DeSANCTIS (514-2111)
8/18/92 JRH FYI
FILE: INDIAN AFFAIRS

REMOVE THIS CONTROL SHEET PRIOR TO FILING AND DISPOSE OF APPROPRIATELY

C/o 22 July 92



U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

OCT 26 1992

The Honorable Larry Pressler
United States Senate
Committee on Commerce, Science,
and Transportation
Washington, D.C. 20510-6125

Re: United States obo Cheyenne River Sioux Tribe v.
State of South Dakota, Dewey County, and Ziebach
County, et al.

Dear Senator Pressler:

This is in response to your recent letter regarding the pending lawsuit against the State of South Dakota and two counties that challenges their imposition of certain motor vehicle taxes on Indians residing on the Cheyenne River Sioux Indian Reservation.

At the request of the Department of the Interior as trustee for the Indian tribes, the Department of Justice filed the lawsuit against South Dakota and Dewey and Ziebach Counties on September 3, 1992. It is our position that the state and counties are in direct and clear violation of federal law, which is set forth in two recent Supreme Court cases, Washington v. Confederated Tribes of the Colville Indian Reservation, 447 U.S. 134 (1980) and Moe v. Confederated Salish and Kootenai Tribes, 425 U.S. 463 (1976).

In your letter, you request information regarding the Department's interest in suing states on behalf of Indian tribes over tax matters. The Department of Justice has no policy or interest per se with respect to prosecuting lawsuits on behalf of Indian tribes generally or in tax matters in particular. As you probably know, the Department of Justice is the executive branch's litigating agency; its attorneys represent the United States in federal and other courts. Its primary clients are other federal agencies and officials. As a general matter, the Department does not instigate litigation on its own; it files and litigates lawsuits if and when one of its client agencies makes a specific request.

In the instant matter, our client is the Department of the Interior, which has the primary responsibility to carry out the federal government's trust obligations to Indian tribes and individual Indians. Based on its request and our independent examination and analysis of the facts and law, we have determined that it is necessary and appropriate to pursue litigation of the dispute over the State's power to assess motor vehicle taxes against Indians residing on the Cheyenne River Sioux Indian Reservation.

You also inquire whether legislation is needed to clarify the law concerning state taxation of Indian tribes. It is our position that, while some discrete issues in the general subject area may remain open to dispute, the law governing the specific issue at hand is quite clear and requires no legislation.

As per your request, enclosed is a copy of the Department's responses to Governor Mickelson's letter.

We hope this adequately addresses your concerns. Please feel free to contact this office with any additional questions

Sincerely,



W. Lee Rawls
Assistant Attorney General

Enclosures



REC-ENSO11:clr
90-6-4-27

U.S. Department of Justice

Environment and Natural Resources Division

Washington, D.C. 20530

July 17, 1992

Mr. George S. Mickelson
Governor
State Capitol
500 E. Capitol
Pierre, South Dakota 57501-5070

Dear Governor Mickelson:

Re: United States obo Cheyenne River Sioux Tribe v.
State of South Dakota, Dewey County, and Ziebach
County, et.al.

Thank you for your response to my letter of June 9, 1992 regarding the above-captioned matter. The Department of Justice is carefully considering the points you have raised, and we will be sending a second reply in response to those points in the near future. I will address in this letter, however, your request for information regarding the Department of Justice's policy that has led to two and possibly three lawsuits by the United States as trustee for Indian tribes against the State of South Dakota.

The Department of Justice has no policy with respect to prosecuting lawsuits against states in general or against South Dakota in particular. The Department of Justice is the federal government's litigating agency; its attorneys represent the United States in federal and other courts. Its primary clients are the other federal agencies. As a general matter, the Department does not instigate litigation on its own; it files and litigates lawsuits if and when one of its client agencies makes a specific request.

In the instant matter, our client is the Department of the Interior, which has the primary responsibility to carry out the federal government's trust obligations to Indian tribes and individual Indians. Based on its request, and our independent examination and analysis of the facts and law, we have determined that it is appropriate and necessary to pursue litigation of the dispute over the State's power to assess motor vehicle taxes against Indians residing on reservations in South Dakota.

I hope that this brief explanation provides the information you were seeking.

Sincerely,

Hank Meshorer

Hank Meshorer, Chief
Indian Resources Section
Environment and Natural
Resources Division



MR. LNSoll:cya
90-6-4-27

U.S. Department of Justice

Environment and Natural Resources Division

Washington, D.C. 20530

August 4, 1992

BY OVERNIGHT FEDERAL EXPRESS

Mr. George S. Mickelson
Governor
State Capitol
500 E. Capitol
Pierre, South Dakota 57501-5070

Dear Governor Mickelson:

Re: United States obo Cheyenne River Sioux Tribe v.
State of South Dakota, Dewey County, and Ziebach
County, et.al.

This letter provides further response to your letter of July 3, 1992, in which you raised several issues regarding the dispute over motor vehicle taxes assessed against members of the Cheyenne River Sioux Tribe who live on the Cheyenne River Sioux Indian Reservation. The Department of Justice briefly addresses these issues below.

In your letter, you state that the State and the Cheyenne River Sioux Tribe have had no in-depth conversations concerning the motor vehicles taxes and that they have "only surfaced tangentially" in the course of taxation negotiations. Further, you express concern that federal litigation over motor vehicle taxes might impair on-going negotiations between the State and the Tribe concerning a "comprehensive tax agreement".

It is our understanding, however, that the Tribe repeatedly has addressed this issue before state and county officials. Indeed, a member of the state legislature introduced specific legislation in an effort to protect the Tribe from inappropriate taxation. Although it reportedly was well-received in one house, the bill ultimately failed to pass. Additionally, the Tribe has filed its own suit in tribal court against county tax officials on this very issue, as you acknowledge in your letter. This state of affairs suggests that the likelihood of successful negotiations regarding the motor vehicle taxes is somewhat dubious. Whatever the current nature and status of these negotiations, however, it is our view that a federal lawsuit would be in the best interests of the Tribe and further

would have no detrimental effect on negotiations over state and tribal taxation.

In your letter, you also offer some points to consider in determining whether a federal lawsuit is warranted in this matter. First, you state that the South Dakota motor vehicle excise tax and registration fee are voluntary, i.e. as long as the Indians stay on the reservation, they do not have to pay. This observation is somewhat flawed and irrelevant. The state law does not exempt reservation Indians from its registration and taxation provisions. More important, even if state law does exempt Indians who stay on reservations, it gives the Indians an all-or-nothing choice; if a member of the Tribe strays one foot off the reservation, he must pay the full excise tax and registration "fee" regardless of his proportionate use of the vehicle on and off reservation. This scenario is no different in any material respect from those taxation schemes considered and rejected in Washington v. Confederated Tribes of the Colville Indian Reservation, 447 U.S. 134 (1980) and Moe v. Confederated Salish and Kootenai Tribes, 425 U.S. 463 (1976).

You also make several observations that, while factually accurate, we view as irrelevant under the law applicable to this dispute. The tribal-state license plates program, from which some tribes receive a percentage of the receipts, appears to be a sound revenue program, but it is legally irrelevant to the taxation practices at issue. Likewise, the state's use of the taxation monies for the general purpose of building and maintaining the state highways and roads has no material relation to the legal question at hand.

In your letter, you raise the specter of the detrimental effect that this lawsuit would have on existing law regarding sales taxes. This matter does not involve sales taxes at all, however, but rather excise taxes and registration "fees" similar to those struck down in Moe and Colville. This concern therefore appears misplaced.

Finally, you query whether the United States wishes to engage in duplicative litigation in view of the fact that the tribe has a two-year old suit against county officials in tribal court on these same issues. It is our position that a lawsuit by the United States against the State itself in no way will duplicate the tribal suit in tribal court against county officials.

We have carefully considered the points raised in your letter. Like you, we would prefer to settle this matter outside the courts. In view of our vastly different views, however, we have come to the conclusion that initiation of a federal lawsuit is the only effective and appropriate means to resolve this important legal dispute.

Thank you for your attention and consideration.

Sincerely,

Hank Meshorer

Hank Meshorer, Chief
Indian Resources Section
Environment and Natural
Resources Division

ERNEST F. HOLLINGS, SOUTH CAROLINA, CHAIRMAN

DANIEL K. INOUE, HAWAII
WENDELL H. FORD, KENTUCKY
J. JAMES EXON, NEBRASKA
ALBERT GORE, JR., TENNESSEE
JOHN D. ROCKEFELLER IV, WEST VIRGINIA
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JOHN B. BREAUX, LOUISIANA
RICHARD H. BRYAN, NEVADA
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TRENT LOTT, MISSISSIPPI

RALPH B. EVERETT, CHIEF COUNSEL AND STAFF DIRECTOR
WALTER B. MCCORMICK, JR., MINORITY CHIEF COUNSEL AND STAFF DIRECTOR

United States Senate

COMMITTEE ON COMMERCE, SCIENCE,
AND TRANSPORTATION

WASHINGTON, DC 20510-6125

July 22, 1992

RECORDED
92 AUG 12 P3:40

The Honorable William P. Barr
The Attorney General
Washington, D.C. 20530

Dear Mr. Attorney General:

Please find enclosed a copy of a letter I received from South Dakota Governor George S. Mickelson concerning a letter he received from the Department of Justice regarding the liability of tribal members for state taxes and tribal taxing authority.

The liability of Indians and non-Indians for state and tribal taxes, and the taxing authority of Indian tribes, are extremely controversial issues in South Dakota. To many of my constituents, they are complex, complicated, and frustrating issues and very difficult to understand fully. I would greatly appreciate receiving the following:

- the Department of Justice position on its interest and role in suing states on behalf of the Indian tribes over tax matters;
- the Department of Justice assessment whether legislation is needed to clarify the law concerning taxes and Indian tribes;
- the Department of Justice response to Governor Mickelson's letter; and
- any additional information you could provide which would facilitate a better understanding of this issue.

I would hope ways could be found to resolve Indian tax issues without bringing suit. I remain ready to help in any way I can.

Sincerely,


Larry Pressler
United States Senator

LP/gwp

enclosure



STATE OF SOUTH DAKOTA

GEORGE S. MICKELSON
GOVERNOR

EXECUTIVE OFFICE
STATE CAPITOL, 500 EAST CAPITOL
PIERRE, SOUTH DAKOTA
57501-5070
(605) 773-3212

July 2, 1992

Mr. Hank Meshorer, Chief
Indian Resources Section
Environment and Natural Resources Division
U.S. Department of Justice
Washington, D.C. 20530

Dear Mr. Meshorer:

I am in receipt of your letter threatening litigation on behalf of the Cheyenne River Sioux Tribe against the state of South Dakota concerning South Dakota motor vehicle excise tax and South Dakota motor vehicle registration fee.

In that letter, you say you have been informed that the Cheyenne River Sioux Tribe and its attorneys have made concerted efforts to convince the state to refrain from collection of those taxes. The facts are that the state of South Dakota and the Cheyenne River Sioux Tribe have had no in-depth conversations concerning the above-mentioned taxes in the years I have been Governor.

The above-mentioned taxes have only surfaced tangentially in discussions between the state and the tribe concerning a comprehensive tax agreement. As the attachment shows, the most recent (one year old) formal tribal offer shows the tribe agreeing not to impose a motor vehicle excise tax or a motor vehicle registration fee. Unfortunately, the comprehensive agreement process failed on other tax issues.

It would now appear the tribe is asking your office to intervene in a negotiating process by suing the state over an issue which the tribe at one time conceded.

While you may not consider this information dispositive of the issue, I feel you should have a true picture of the level of discussions between the state and the tribe.

1992
JUL - 9

AM 10:4



Mr. Hank Meshorer
July 2, 1992
Page 2

Aside from this historical review, however, I would like to briefly respond to the analysis contained in your letter.

First, the South Dakota motor vehicle excise tax and registration fee are voluntary. That is to say, no tribal member is required to pay those taxes and fees so long as the vehicle remains on the reservation.

Second, the monies collected from the South Dakota motor vehicle excise tax go to the state highway fund and may only be issued for highway purposes. These highways--both on and off the reservation--are used by all the citizens of South Dakota.

Third, the South Dakota legislature, at the urging of the tribes, has passed legislation adopting a combined state/tribal plate which any citizen can purchase and use statewide. Six tribes--the Standing Rock Sioux Tribe, the Sisseton-Wahpeton Sioux Tribe, the Yankton Sioux Tribe, the Lower Brule Sioux Tribe, the Rosebud Sioux Tribe and the Crow Creek Sioux Tribe--have designated a distinctive tribal design for the plates (enclosed), and the tribes are now gaining some of the revenue from the sales of those plates.

Fourth, the tribe has already brought litigation against the county officials who collect the motor vehicle taxes and fees. I wonder if the U.S. Department of Justice wants to bring duplicative litigation to resolve the same issue.

And, fifth, virtually all of the new car sales in question occur off the reservation. Your letter suggests that such sales are not taxable by the state, and then implied that no sale of personal property to Indians off the reservation is taxable by the state. This result would seriously upset existing law and practice throughout the nation.

In summary, I believe the facts in this case are somewhat more complex than perhaps you have been led to believe, and it would, therefore, be appropriate to discuss the matter further.

I do have one final request. Since the state of South Dakota has now been sued (or threatened with suit) by the Department of Justice for the third time in two years over tribal issues, I would ask that you inform me as to the policy in the department which culminates in these lawsuits. It would be

Mr. Hank Meshorer
July 2, 1992
Page 3

helpful to me to know how the Department of Justice reaches the point of threatening litigation against my state (without my prior knowledge) and the policy behind it.

Very truly yours,



GEORGE S. MICKELSON

GSM:ggj

cc: The Honorable William Barr
The Honorable Larry Pressler
The Honorable Tom Daschle
The Honorable Tim Johnson

DOJ EXECUTIVE SECRETARIAT CROSS-REFERENCE RECORD



CONTROL NUMBER: 92073111478
STEVENS, TED SENATOR

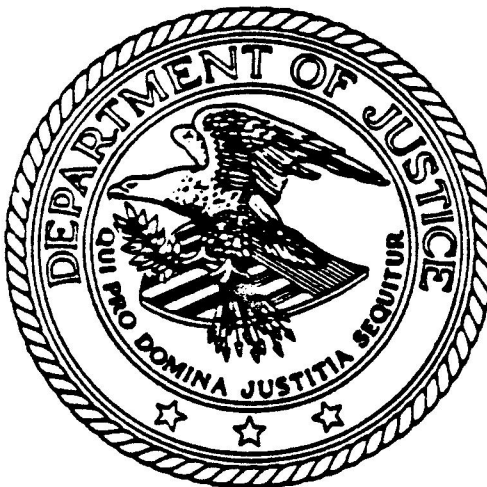
(Request for additional funding for Legal Resources
in Alaska to defend Tribal Organizations under PL
93-638)

THE ENTIRE DOCUMENT PACKET FOR THE CONTROLLED
CORRESPONDENCE INDICATED BY THE ABOVE EX.SEC.
CONTROL NUMBER HAS BEEN FILED IN THE FOLLOWING
PRIMARY FILE LOCATION WITHIN THE SUBJECT FILES
OF THE ATTORNEY GENERAL.

PRIMARY FILE: BUDGET/DOJ

22 JULY 92

DOJ EXECUTIVE SECRETARIAT CROSS-REFERENCE RECORD



CONTROL NUMBER: 92073011427

HARRIS, LaDONNA

THE ENTIRE DOCUMENT PACKET FOR THE CONTROLLED
CORRESPONDENCE INDICATED BY THE ABOVE EX.SEC.
CONTROL NUMBER HAS BEEN FILED IN THE FOLLOWING
PRIMARY FILE LOCATION WITHIN THE SUBJECT FILES
OF THE ATTORNEY GENERAL.

PRIMARY FILE: AG MEETINGS/REQUEST-OFFICIALS U.S.

22 JULY 92

INDIAN AFFAIRS

22 JULY 92

DEPARTMENT OF JUSTICE
EXECUTIVE SECRETARIAT CONTROL DATA SHEET

From: GREEN, JESS, ESQ., ADA, OK

To: AG.

ODD: 08-03-92

Date Received: 07-16-92 Date Due: 08-03-92 Control #: X92072010872

Subject & Date

07-03-92 LETTER REFERRING TO HIS EARLIER CORRESPONDENCE
DATED JUNE 3, 1992, REQUESTING THE AG'S ASSISTANCE IN
MAKING INQUIRIES ABOUT THE POSITION OF U.S. DISTRICT
ATTORNEYS IN OKLAHOMA REGARDING CLASS III INDIAN GAMING.
ADVISES THAT THE STATE GOVERNOR'S OFFICE HAS TAKEN THE
POSITION THAT IF A COMPACT IS SIGNED, A DECLARATORY JUDGMENT
SHOULD BE PURSUED AGAINST THE LOCAL U.S. DISTRICT ATTORNEY
TO DETERMINE THE IMPACT OF THE JOHNSON ACT. FEELS THAT **

Referred To: Date: Referred To: Date:

(1) EOA;McWHORTER 07-20-92

(5)

W/IN:

(2) (6)

(3) (7)

PRTY:

(4) (8)

1Z

INTERIM BY:

DATE:

OPR:

Sig. For: EOA

Date Released: 09-04-92

EHZ

Remarks

** ADDITIONAL HELP, WHICH THE AG MAY PROVIDE, COULD ASSIST
IN AVOIDANCE OF ALL LITIGATION. THANKS THE AG FOR THE
ACTION AND HIS CONTINUED INTEREST IN THIS MATTER.
(SEE EXEC. SEC. 92060508726 CONTROL SHEET ATTACHED.)

INFO CC: OAG, DAG, CRM, OPC/OLS.

(1) RETURN CONTROL SHEET W/COPY OF SIGNED AND DATED RESPONSE

Other Remarks:

TO EXEC. SEC., ROOM 4400-AA.

09-04-92 EOA REPLIED BY LETTER DATED 09-02-92. (TJ)

OLA CONTACT:

TO AMY LECOCQ

FILE: INDIAN AFFAIRS

CROSS REFERENCES:

1. GAMBLING

REMOVE THIS CONTROL SHEET PRIOR TO FILING AND DISPOSE OF APPROPRIATELY

3 JULY 92



U.S. Department of Justice

Executive Office for United States Attorneys

Office of the Director

Washington, D.C. 20530

SEP 2 1992

Mr. Jess Green
Attorney At Law
301 East Main
Ada, Oklahoma 74820

Dear Mr. Green:

I am writing in reply to your letter of July 3, 1992 at the request of the Attorney General. He appreciates your on-going interest in this matter. The issues address themselves initially to the United States Attorneys in Oklahoma. However, the Department of Justice as a whole is ready to support their offices as needed.

If I can be of further assistance, please contact my office.

Sincerely,

Laurence S. McWhorter
Director

JESS GREEN
ATTORNEY AT LAW

FAX: (405) 332-5180
TELEPHONE: (405) 436-1946

301 EAST MAIN
ADA, OKLAHOMA 74820

July 3, 1992

William Barr
United States Attorney General
Department of Justice
Washington, D.C. 20530

Dear Mr. Barr:

During the early part of June, 1992, I posted a letter requesting your assistance in making inquiries about the position of United States District Attorneys in Oklahoma in regard to Class III Indian Gaming.

The United States District Attorneys in Oklahoma have taken the position that a Class III video lottery is a violation of the Johnson Act and may require prosecution of the State Governor if a Class III agreement is reached between the Governor and Indian tribes.

Since my original contact with you, the State Governor's office has taken the position that if a compact is signed, a declaratory judgment should be pursued against the local United States District Attorney to determine the impact of the Johnson Act. Local United States District Attorneys appear to be resigned to the same. The State Governor's negotiator is requiring that upon signing of a Class III Compact, an Indian tribe will be required to file an action for declaratory judgment to assure that the local United States Attorney does not interfere with Indian gaming operations.

Based upon the information I have received, your office has made inquiries concerning this matter. Such action has resulted in some progress. Nonetheless, additional help which you may provide could assist in avoidance of all litigation.

Your continued inquiry and monitoring of this situation has been and will be noted by all parties. On behalf of the Oklahoma Indian Gaming Association, I thank you for the action you have given this matter and for your continued interest.

Sincerely,


Jess Green

JG/ke

DEPARTMENT OF JUSTICE
EXECUTIVE SECRETARIAT CONTROL DATA SHEET

From: MICKELSON, GEORGE S., GOVERNOR, STATE OF SOUTH DAKOTA
To: MESHORER, HANK, ENR (CC: AG.) ODD: NONE
Date Received: 07-08-92 Date Due: NONE Control #: X92070810290
Subject & Date

07-02-92 LETTER (COPY) RESPONDING TO ENR'S RECENT LETTER
THREATENING LITIGATION ON BEHALF OF THE CHEYENNE RIVER
SIOUX TRIBE AGAINST THE STATE OF SOUTH DAKOTA CONCERNING
SOUTH DAKOTA MOTOR VEHICLE EXCISE TAX AND SOUTH DAKOTA
MOTOR VEHICLE REGISTRATION FEE. HE BELIEVES THE FACTS IN
THIS CASE ARE SOMEWHAT MORE COMPLEX THAN PERHAPS ENR HAS
BEEN LED TO BELIEVE AND FEELS IT WOULD BE APPROPRIATE TO
DISCUSS THE MATTER FURTHER. REQUESTS INFORMATION AS TO **

	Referred To:	Date:	Referred To:	Date:	
(1)	ENR;CLEGG	07-08-92	(5)		W/IN:
(2)			(6)		
(3)			(7)		PRTY:
(4)			(8)		1Z
	INTERIM BY:		DATE:		OPR:
	Sig. For: ENR		Date Released:		MAU

Remarks

** DOJ'S POLICY WHICH CULMINATES IN THESE LAWSUITS.

INFO CC: OAG, ASG.

(1) FOR APPROPRIATE HANDLING.
SEE E.S. 92081712276.

Other Remarks:

OLA CONTACT:

FILE: INDIAN AFFAIRS

REMOVE THIS CONTROL SHEET PRIOR TO FILING AND DISPOSE OF APPROPRIATELY



STATE OF SOUTH DAKOTA

GEORGE S. MICKELSON
GOVERNOR

EXECUTIVE OFFICE
STATE CAPITOL, 500 EAST CAPITOL
PIERRE, SOUTH DAKOTA
57501-5070
(605) 773-3212

July 2, 1992

Mr. Hank Meshorer, Chief
Indian Resources Section
Environment and Natural Resources Division
U.S. Department of Justice
Washington, D.C. 20530

Dear Mr. Meshorer:

I am in receipt of your letter threatening litigation on behalf of the Cheyenne River Sioux Tribe against the state of South Dakota concerning South Dakota motor vehicle excise tax and South Dakota motor vehicle registration fee.

In that letter, you say you have been informed that the Cheyenne River Sioux Tribe and its attorneys have made concerted efforts to convince the state to refrain from collection of those taxes. The facts are that the state of South Dakota and the Cheyenne River Sioux Tribe have had no in-depth conversations concerning the above-mentioned taxes in the years I have been Governor.

The above-mentioned taxes have only surfaced tangentially in discussions between the state and the tribe concerning a comprehensive tax agreement. As the attachment shows, the most recent (one year old) formal tribal offer shows the tribe agreeing not to impose a motor vehicle excise tax or a motor vehicle registration fee. Unfortunately, the comprehensive agreement process failed on other tax issues.

It would now appear the tribe is asking your office to intervene in a negotiating process by suing the state over an issue which the tribe at one time conceded.

While you may not consider this information dispositive of the issue, I feel you should have a true picture of the level of discussions between the state and the tribe.

EXECUTIVE OFFICE
JUL -8 10:54
PIERRE, SD

Mr. Hank Meshorer
July 2, 1992
Page 2

Aside from this historical review, however, I would like to briefly respond to the analysis contained in your letter.

First, the South Dakota motor vehicle excise tax and registration fee are voluntary. That is to say, no tribal member is required to pay those taxes and fees so long as the vehicle remains on the reservation.

Second, the monies collected from the South Dakota motor vehicle excise tax go to the state highway fund and may only be issued for highway purposes. These highways--both on and off the reservation--are used by all the citizens of South Dakota.

Third, the South Dakota legislature, at the urging of the tribes, has passed legislation adopting a combined state/tribal plate which any citizen can purchase and use statewide. Six tribes--the Standing Rock Sioux Tribe, the Sisseton-Wahpeton Sioux Tribe, the Yankton Sioux Tribe, the Lower Brule Sioux Tribe, the Rosebud Sioux Tribe and the Crow Creek Sioux Tribe--have designated a distinctive tribal design for the plates (enclosed), and the tribes are now gaining some of the revenue from the sales of those plates.

Fourth, the tribe has already brought litigation against the county officials who collect the motor vehicle taxes and fees. I wonder if the U.S. Department of Justice wants to bring duplicative litigation to resolve the same issue.

And, fifth, virtually all of the new car sales in question occur off the reservation. Your letter suggests that such sales are not taxable by the state, and then implied that no sale of personal property to Indians off the reservation is taxable by the state. This result would seriously upset existing law and practice throughout the nation.

In summary, I believe the facts in this case are somewhat more complex than perhaps you have been led to believe, and it would, therefore, be appropriate to discuss the matter further.

I do have one final request. Since the state of South Dakota has now been sued (or threatened with suit) by the Department of Justice for the third time in two years over tribal issues, I would ask that you inform me as to the policy in the department which culminates in these lawsuits. It would be

Mr. Hank Meshorer
July 2, 1992
Page 3

helpful to me to know how the Department of Justice reaches the point of threatening litigation against my state (without my prior knowledge) and the policy behind it.

Very truly yours,



GEORGE S. MICKELSON

GSM:ggj

cc: The Honorable William Barr
The Honorable Larry Pressler
The Honorable Tom Daschle
The Honorable Tim Johnson

DOJ EXECUTIVE SECRETARIAT CROSS-REFERENCE RECORD



CONTROL NUMBER: 92062409625

BASSETT, H.L.

THE ENTIRE DOCUMENT PACKET FOR THE CONTROLLED
CORRESPONDENCE INDICATED BY THE ABOVE EX.SEC.
CONTROL NUMBER HAS BEEN FILED IN THE FOLLOWING
PRIMARY FILE LOCATION WITHIN THE SUBJECT FILES
OF THE ATTORNEY GENERAL.

PRIMARY FILE: STATE & LOCAL GOVERNMENT

19 JUNE 92

DEPARTMENT OF JUSTICE
EXECUTIVE SECRETARIAT CONTROL DATA SHEET

From: MARTIN, PHILLIP, MISSISSIPPI BAND OF CHOCTAW INDIANS, MS
To: AG. ODD: 07-16-92
Date Received: 06-30-92 Date Due: 07-16-92 Control #: X92070210018
Subject & Date

06-18-92 LETTER ENCLOSING THEIR PUBLICATION "1992 - YEAR OF
THE AMERICAN INDIAN, INVEST IN OUR FUTURE," WHICH HAS BEEN
PRODUCED INDEPENDENTLY OF THE FEDERAL AGENCIES, & IS A JOINT
EFFORT BY A NUMBER OF TRIBES, INCLUDING HIS TRIBE, AND
ADDRESSES MANY UNDER-FINANCED NEEDS IN INDIAN COUNTRY AND
SUGGESTS IMPROVEMENTS. THEY HOPE THAT THE AG WILL REVIEW
THIS PUBLICATION AND GIVE SUBSTANTIAL CONSIDERATION TO THE
NEEDS OF INDIANS AND THE OPPORTUNITY FOR ALTERING **

	Referred To:	Date:	Referred To:	Date:	
(1)	ENR;CLEGG	07-02-92	(5)		W/IN:
(2)			(6)		
(3)			(7)		PRTY:
(4)			(8)		1Z
	INTERIM BY:		DATE:		OPR:
	Sig. For: ENR		Date Released: 01-25-93		EHZ

Remarks

** CONDITIONS IN INDIAN COUNTRY THROUGH APPROPRIATE
INVESTMENTS. THEY APPRECIATE THE AG'S CONTINUED SUPPORT.

INFO CC WITHOUT ENCLOSURE: OAG, ASG.

(1) RETURN CONTROL SHEET W/COPY OF SIGNED AND DATED RESPONSE
TO EXEC. SEC., ROOM 4400-AA. ORIG. ENCLOSURE SENT TO ENR.
01-25-93 ENR REPLIED BY LETTER DATED 01-21-93. (TJ)

Other Remarks:

OLA CONTACT:

FILE: INDIAN AFFAIRS

CROSS REFERENCES:

1. PRINTED MATERIALS/Pamphlets-Brochures

REMOVE THIS CONTROL SHEET PRIOR TO FILING AND DISPOSE OF APPROPRIATELY

C/O 18 JUNE R



U.S. Department of Justice

Environment and Natural Resources Division

Office of the Assistant Attorney General

Washington, D.C. 20530

January 21, 1993

Chief Phillip Martin
Mississippi Band of Choctaw Indians
Tribal Office Building
Route 7, Box 91
Philidelphia, MS 39350

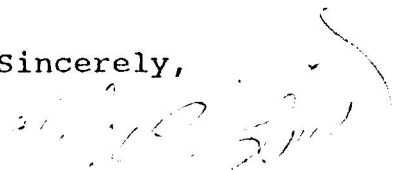
Thank you for your recent presentation of the handbook entitled 1992-Year of the American Indian, Invest in Our Future. We have reviewed the document and accompanying letter requesting additional spending for Indian programs.

The Department of Justice has little programmatic role with Indian tribes. As you note in your publication, the primary government agencies providing services to the tribes are the Bureau of Indian Affairs (BIA), the Indian Health Service, The Department of Housing and Urban Development, and the Department of Education.

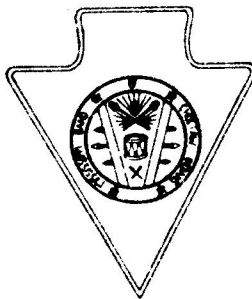
The Department of Justice's primary responsibility is to act as the lawyer for executive branch agencies. For example, we represent BIA when it seeks to take legal action on behalf of tribes to protect their sovereignty, their land, or their treaty rights. We can commence litigation only if the BIA requests the Department to represent the United States.

Once again, thank you writing. We hope this letter has been helpful in explaining the Department's role with respect to Indian tribes.

Sincerely,


Myles E. Flint
Acting Assistant Attorney General

MISSISSIPPI BAND OF CHOCTAW INDIANS
OFFICE OF THE TRIBAL CHIEF



TRIBAL OFFICE BUILDING
ROUTE 7, BOX 21
PHILADELPHIA, MISSISSIPPI 39350
TELEPHONE (601) 656-5251

June 18, 1992

The Honorable William Barr
Attorney General of the United States
Tenth Street and Constitution Avenue NW
Washington, DC 20530

Dear Mr. Secretary:

"The Year of the American Indian should be a landmark, beginning the second 500 years of American history since the arrival of Columbus. What better way to honor this country's native peoples for their participation in America's history than to make a national commitment to their full participation in America's future?"

Enclosed please find our publication, entitled *1992 - Year of the American Indian, Invest in Our Future*. This publication, which has been produced independently of the federal agencies, is a joint effort by a number of tribes, including this tribe, and addresses many under-financed needs in Indian Country. It represents the first Indian budget prepared by Indians themselves, and points out that Indian programs have not kept pace with inflation, population growth, or the balance of domestic spending over the past 15 or more years. The publication also suggests numerous improvements in the administration of Indian programs to make them more responsive to Indian needs.

We hope that you will review this publication and give substantial consideration to the needs of Indians and the opportunity for altering conditions in Indian Country through appropriate investments. We recognize that there are many other competing priorities, but believe the conditions described in the publication deserve additional consideration.

We appreciate your continued support of Indian programs.

Sincerely,

Phillip Martin
Chief

PM:ab

1992 - YEAR OF THE AMERICAN INDIAN



Invest In Our Future

2 362-73X

JUN24.92

MS 362-73X
PKG ID# 010

ups

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DIGI REG# 00151340 TRAN# 10



PRINTING AND DIRECT MAIL

6400 Deerwood Trail • Ocean Springs, MS 39564

THE HONORABLE WILLIAM BARR
ATTORNEY GENERAL OF THE UNITED STATES
TENTH STREET AND CONSTITUTION AVENUE NW
WASHINGTON, DC 20530

DEPARTMENT OF JUSTICE
EXECUTIVE SECRETARIAT CONTROL DATA SHEET

From: DORNAN, CONG. ROBERT K.

To: AG.

ODD: 07-06-92

Date Received: 06-22-92 Date Due: 09-10-92 Control #: X920622094479

Subject & Date

06-16-92 "DEAR BILL" LETTER (FAX RECEIVED FROM OAG)
REGARDING THE ONGOING PROBLEMS AT THE CHEMEHUEVI INDIAN
RESERVATION AT LAKE HAVASU, CA. THE CONGRESSMAN NOTES THAT
SERIOUS QUESTIONS REMAIN CONCERNING THE LEGITIMACY OF THE
FORMER TRIBAL GOVERNMENT AND THE EVICTION OF MANY HOMEOWNERS
FROM THEIR PROPERTIES ON THE RESERVATION. REQUESTS THAT ANY
ACTIONS CONTEMPLATED BY THE DEPARTMENT IN THIS MATTER BE PUT
ON HOLD UNTIL A LEGITIMATE TRIBAL COUNCIL, REPRESENTATIVE **

	Referred To:	Date:		Referred To:	Date:	
(1)	OLA;RAWLS	08-04-92	(5)	OLA;RAWLS	08-27-92	W/IN:
(2)	EOA;MCWHORTER	08-19-92	(6)	EOA;MCWHORTER	08-28-92	
(3)	OLA;RAWLS	08-21-92	(7)	OLA;RAWLS	09-03-92	PRTY:
(4)	EOA;MCWHORTER	08-27-92	(8)			1
	INTERIM BY:			DATE:		OPR:
	Sig. For: OLA			Date Released: 10-09-92		MLH

Remarks

- (1) EOA REVISED LETTER FOR SIGNATURE. (MLH)
- (2) RETURNED FOR ADDITIONAL REVISIONS. SEE OLA NOTE ATTACHED. PLEASE EXPEDITE. RETURN THRU EXEC SEC. (MLH)
- (3) EOA REVISED LETTER FOR SIGNATURE. YEW
- (4) RETURNED FOR REVISIONS. (MLH)
- (5) EOA REVISED LETTER FOR SIGNATURE. YEW
- (6) RETURNED FOR REVISIONS. SEE OLA NOTE ATTACHED. YEW

Other Remarks:

- (7) EOA REVISED LETTER FOR SIGNATURE. YEW
- 10-09-92: AAG RAWLS SIGNED LETTER WHICH WAS DATED 10-09-92
IN E.S. AND MAILED FROM E.S. COPIES TO EOA, AG FILES AND
LEGISLATIVE FILES. YEW

OLA CONTACT: JOE DeSANCTIS (514-2111)

FILE: INDIAN AFFAIRS

REMOVE THIS CONTROL SHEET PRIOR TO FILING AND DISPOSE OF APPROPRIATELY

C/O 16 June 92

DEPARTMENT OF JUSTICE
EXECUTIVE SECRETARIAT CONTROL DATA SHEET

From: DORNAN, CONG. ROBERT K.

To: AG.

ODD: 07-06-92

Date Received: 06-22-92 Date Due: 07-30-92 Control #: X92062209447

Subject & Date

06-16-92 "DEAR BILL" LETTER (FAX RECEIVED FROM OAG)
REGARDING THE ONGOING PROBLEMS AT THE CHEMEHUEVI INDIAN
RESERVATION AT LAKE HAVASU, CA. THE CONGRESSMAN NOTES THAT
SERIOUS QUESTIONS REMAIN CONCERNING THE LEGITIMACY OF THE
FORMER TRIBAL GOVERNMENT AND THE EVICTION OF MANY HOMEOWNERS
FROM THEIR PROPERTIES ON THE RESERVATION. REQUESTS THAT ANY
ACTIONS CONTEMPLATED BY THE DEPARTMENT IN THIS MATTER BE PUT
ON HOLD UNTIL A LEGITIMATE TRIBAL COUNCIL, REPRESENTATIVE **

	Referred To:	Date:		Referred To:	Date:	
(1)	EOA;McWHORTER	06-22-92	(5)			W/IN:
(2)	EOA;McWHORTER	07-14-92	(6)			
(3)	OLA;RAWLS	07-14-92	(7)			PRTY:
(4)	EOA;McWHORTER	07-23-92	(8)	OLA;RAWLS	08-04-92	1
	INTERIM BY:			DATE:		OPR:
	Sig. For:	OLA		Date Released:	SEE "9"	MLH

Remarks

** OF THE CHEMEHUEVI PEOPLE, IS PLACED IN POWER AND CAN
DECIDE WHAT IS IN THE BEST INTEREST OF THE TRIBE.
SEE E.S. 92060308512 & 92060808794 - COPIES ATTACHED.
EXEC SEC SENT COPIES TO OAG, OAG (STEVENS), DAG, FBI, ENR,
OLA (DeSANCTIS).

(1) PREPARE RESPONSE FOR AAG/OLA SIGNATURE AND RETURN TO
EXEC. SEC., ROOM 4400-AA, WITH COPY OF INCOMING

Other Remarks:

CORRESPONDENCE, FOR TRANSMITTAL TO OLA.
06-25-92. ORIGINAL RECEIVED AND SENT TO AG FILES. (MLN)
PLEASE EXPEDITE. CONG. OFFICE PHONE. (MLH)
(3) EOA LETTER FOR SIGNATURE. YEW
(4) RETURNED FOR REVISIONS. (MLH)
OLA CONTACT: JOE DeSANCTIS (514-2111)
6/22/92 TO JRH FYI
FILE: INDIAN AFFAIRS

REMOVE THIS CONTROL SHEET PRIOR TO FILING AND DISPOSE OF APPROPRIATELY



U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

OCT 9 1992

The Honorable Robert K. Dornan
U.S. House of Representatives
Washington, D.C. 20515

Attn: Gregg Smith

Dear Congressman Dornan:

This is in reply to your letter of June 16, 1992, to Attorney General Barr and United States Attorney George O'Connell. I have checked with the various United States Attorneys' Offices in Arizona and California. It is the United States Attorney's Office for the Central District of California that is handling this matter for the Department of the Interior.

The United States Attorney's Office has, at the request of the Department of Interior (DOI), filed ejectment actions against ten of the non-Indian tenants currently residing on Indian lands without making proper payment. These ejectment actions are compelled by current DOI regulations and would have been taken no matter what the status of the tribal dispute.

The leases enjoyed by the tenants were not cancelled, but were, in fact, year-to-year leases that have lapsed. Attorneys for the Bureau of Indian Affairs (BIA) and the Tribe have been negotiating for a year with the tenants trying to renew the leases. The main problems have seemed to be that under applicable Interior regulations, the rent must increase from \$150 a month to \$200 a month, and the refusal of a request by the tenants that the Tribe waive its sovereign immunity rights.

As to the issue of the Tribal dispute, BIA has advised the tenants as to who is to receive payment and has been an active part of the lease negotiations. The Secretary of the Interior has had appraisals done and made an independent review. Whatever the status of any dispute as to the Tribal Council, it has no bearing on the situation as between the Tribe and tenants.

I hope this addresses the concerns that you have raised. If I may be of further assistance, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read 'W. Lee Rawls', with a stylized, cursive script.

W. Lee Rawls
Assistant Attorney General

ROBERT K. DORNAN
38TH DISTRICT, CALIFORNIA

PERMANENT SELECT
COMMITTEE ON INTELLIGENCE

ARMED SERVICES COMMITTEE

SUBCOMMITTEES:
SEAPOWER AND STRATEGIC MATERIALS
RESEARCH AND DEVELOPMENT

SELECT COMMITTEE ON
NARCOTICS ABUSE AND CONTROL

PERMANENT OBSERVER TO
GENEVA ARMS CONTROL
NEGOTIATIONS



Congress of the United States House of Representatives

June 16, 1992

CHAIRMAN
RSC TASK FORCE ON
FOREIGN AFFAIRS AND DEFENSE

EXECUTIVE COMMITTEE
HOUSE REPUBLICAN RESEARCH
COMMITTEE

TASK FORCES:
TAX POLICY AND
JOB OPPORTUNITIES
STRATEGIC DEFENSE INITIATIVE
INTERNATIONAL NARCOTICS CONTROL
TERRORISM
CIVIL RIGHTS
AMERICANS MISSING IN ACTION

HISPANIC CAUCUS
HUMAN RIGHTS CAUCUS

The Honorable William Barr
Attorney General of the United States
Constitution Avenue and 10th St. NW
Washington, DC 20530

Dear Bill:

I am writing regarding the ongoing problems at the Chemehuevi Indian Reservation at Lake Havasu, California.

I am aware that you have already received several letters from my esteemed colleagues on this matter, so I will not bother you with yet another diatribe on the facts leading up to this current situation.

However, a brief update is necessary. Due to conflicts with the now missing-in-action tribal government of Christine Walker, many homeowners, my constituents among them, were slated for eviction from their properties on the reservation. It is my understanding that these evictions are continuing since the recent FBI raid and subsequent disappearance of the Walker organization. At this time, serious questions remain concerning the legitimacy of the Walker Government and therefore the legality of the evictions. It is therefore difficult for my constituents to comprehend why the U.S. Attorneys Office is still actively pursuing this matter.

At this point, my constituents are caught in a difficult position. Their leases were cancelled by the former tribal government of Christine Walker. However, due to recent events it is now unknown which tribal government actually represents the Chemehuevi people. It is therefore impossible to re-negotiate the leases. Since there is no current lease, they cannot pay, but if they do not pay they will be evicted by the Justice Department.

My office has attempted to work with the U.S. Attorneys Office in Los Angeles in order to stop these evictions until the situation has a chance to clarify itself. However, these discussions proved of little value as your officers there showed no willingness to listen or even keep my office informed as to their intentions.

Secretary of the Interior
June 16, 1992
Page 2

I am therefore requesting that any actions contemplated by the Department of Justice in this matter be put on hold until a legitimate tribal council, representative of the Chemehuevi people, is placed in power and can decide what is in the best interest of the tribe. It is clear that this would be the best course of action for all involved.

Please respond to my assistant, Mr. Gregg Smith, in my district office. Due to the nature of this request, I would appreciate a reply as soon as possible.

Thank you for your time in this matter.

Best regards,



Robert K. Dornan
U.S. Congressman

RKD:gts

DOJ EXECUTIVE SECRETARIAT CROSS-REFERENCE RECORD



CONTROL NUMBER: 92061709271

HOLLINGS, ERNEST, THURMOND, STROM, SPRATT, JOHN
SENATORS

THE ENTIRE DOCUMENT PACKET FOR THE CONTROLLED
CORRESPONDENCE INDICATED BY THE ABOVE EX.SEC.
CONTROL NUMBER HAS BEEN FILED IN THE FOLLOWING
PRIMARY FILE LOCATION WITHIN THE SUBJECT FILES
OF THE ATTORNEY GENERAL.

PRIMARY FILE: LEGISLATION/GENERAL

16 JUNE 1992

DOJ EXECUTIVE SECRETARIAT CROSS-REFERENCE RECORD



CONTROL NUMBER: 92061709283

SPRATT, JOHN M, CONGRESSMAN

THE ENTIRE DOCUMENT PACKET FOR THE CONTROLLED
CORRESPONDENCE INDICATED BY THE ABOVE EX.SEC.
CONTROL NUMBER HAS BEEN FILED IN THE FOLLOWING
PRIMARY FILE LOCATION WITHIN THE SUBJECT FILES
OF THE ATTORNEY GENERAL.

PRIMARY FILE: LEGISLATION/GENERAL

12 JUNE 92

INDIAN AFFAIRS

12 JUNE 92

DEPARTMENT OF JUSTICE
EXECUTIVE SECRETARIAT CONTROL DATA SHEET

From: GREEN, JESS, ESQ., ADA, OK

To: AG.

ODD: 06-19-92

Date Received: 06-05-92 Date Due: 06-19-92 Control #: X92060508726

Subject & Date

06-03-92 LETTER (FAX REC'D FROM OJP), FROM THE ATTORNEY
FOR THE OKLAHOMA INDIAN GAMING ASSOCIATION, REGARDING THE
U.S. ATTORNEY'S OFFICE POSITION THAT DISCOURAGES
THE SIGNING OF A COMPACT FOR CLASS III GAMING BETWEEN
DIFFERENT INDIAN TRIBES AND THE STATE OF OKLAHOMA. ADVISES
THAT THEY NEED THE GAMING INCOME AND EMPLOYMENT TO MAINTAIN
VARIOUS PROGRAMS AND FEED FAMILIES. REQUESTS THE AG'S
ASSISTANCE FOR A RESOLUTION OF THIS PROBLEM, W/ENCLOSURE.

Referred To: Date: Referred To: Date:

(1) EOA;MCWHORTER 06-05-92

(5)

W/IN:

(2) EOA;MCWHORTER 06-08-92

(6)

PRTY:

(3)

(7)

1Z

(4)

(8)

OPR:

INTERIM BY:

DATE:

EHZ

Sig. For: EOA

Date Released: 07-28-92

Remarks

INFO CC: OAG, DAG, CRM, OPC/OLS.

(1) RETURN CONTROL SHEET W/COPY OF SIGNED AND DATED RESPONSE
TO EXEC. SEC., ROOM 4400-AA.

(2) W/FOLLOW-UP LETTER DATED 06-04-92 PROVIDING ADDITIONAL
INFORMATION TO HIS PREVIOUS CORRESPONDENCE OF 06-03-92.

EXEC. SEC. PROVIDED COPIES TO OAG, DAG, CRM & OPC/OLS. (MAU)
07-28-92 EOA MCWHORTER REPLIED BY LETTER DATED 07-24-92.(TJ)

Other Remarks:

OLA CONTACT:

JRH 6/8/92

FILE: INDIAN AFFAIRS

CROSS REFERENCES:

1. GAMBLING

REMOVE THIS CONTROL SHEET PRIOR TO FILING AND DISPOSE OF APPROPRIATELY

3
JUNE 92

JUL 24 1992

Mr. Jess Green
Attorney at Law
301 East Main
Ada, Oklahoma 74820

Dear Mr. Green:

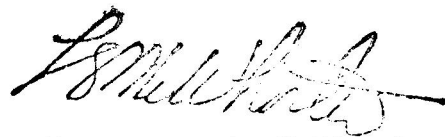
Your letters of June 3, and June 4, 1992 to Attorney General William P. Barr have been referred to me for reply. I have discussed the issues you raised with the three United States Attorneys for Oklahoma.

The United States Attorneys met with Mr. Nance at his request. Although there was a general discussion, as between lawyers, as to the applicable law, the United States Attorneys advised him specifically that they are not permitted to render advisory or anticipatory opinions. Thus, they could not, and did not, state a final position for the United States on the issue of the legality of possible future conduct.

As to Indian gambling under the new statutes and regulations, what is permitted under state law must be addressed in the first instance by state authorities and only then by the United States Attorneys, when they are presented with an actual case under applicable Federal law for a real prosecutive opinion.

I hope that this addresses your concerns.

Sincerely,



Laurence S. McWhorter
Director

LSM:LD:jdww (n:agjess.2) 7/24/92
bcc: LSM Chron
Exec.Sec. 92060508726
#9200765
File.Cong. ED/OK

JESS GREEN
ATTORNEY AT LAW

301 EAST MAIN
ADA, OKLAHOMA 74820

June 4, 1992 JUN -8 A9:48

EXECUTIVE SECRET

William Barr
United States Attorney General
Department of Justice
Washington, D.C. 20530

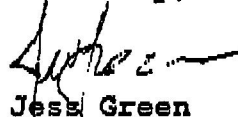
Dear Sir:

On June 3, 1992, I faxed and posted a letter requesting your assistance because of the posturing of Oklahoma United States District Attorneys in regard to tribal-state compacts under IGRA. Subsequent to that posting and faxing, I received additional correspondence which indicates statements of the United States Attorneys are much more serious than originally thought.

Based upon the attached two letters, it appears that the Governor of the State of Oklahoma has been threatened with prosecution if compacts are pursued. As I emphasized in earlier correspondence, I believe the Federal Gaming Commission and Secretary of the Interior have the responsibility for protecting the interest of federal government in this area. Moreover, the threats alleged may prevent those compacts from being signed so that appropriate federal review is never performed.

Any assistance you can provide to reduce the chill created by members of the federal justice system will be appreciated.

Sincerely,


Jess Green

JG/ke

Attachments

MICHAEL MINNIS & ASSOCIATES, P.C.

ATTORNEYS AT LAW

LIBERTY TOWER, SUITE 8100

100 NORTH BROADWAY

OKLAHOMA CITY, OKLAHOMA 73102-8808

TELEPHONE (405) 285-7888

TELECOPIER (405) 232-6460

June 3, 1992

MICHAEL MINNIS
DAVID MADDULLOUGH

VIA TELECOPIER #273-0686

David Qualls
Citizen Band Potawatomi Indian Tribe
of Oklahoma
1503 Gordon Cooper
Shawnee, Oklahoma 74801

Re: Class III Gaming

Dear David:

During our meeting today with Bob Nance to discuss a Class III gaming compact with the State of Oklahoma, my notes reflect that Nance's Johnson Act concern was that the Governor did not want to sign off on a "crime." We asked what he meant by that, and Nance said that during last Thursday's meeting with the United States District Attorneys, Tony Graham (U.S. Attorney for the Northern District) said that the Governor might be prosecuted as a co-conspirator for violating the Johnson Act should he sign a compact with an Indian tribe authorizing video lottery terminals. As expressed during the meeting, this is an outrageous threat by federal authorities who have shown little or no inclination to prosecute present, non-compacted violations of the Johnson Act throughout Oklahoma. Please let us know if you need anything further.

Very Truly Yours,

MICHAEL MINNIS & ASSOCIATES, P.C.


Michael Minnis

MM/djp



David J. Qualls, Chairman
Robert R. Stephens, Vice Chairman
Tim E. Harper, Secretary/Treasurer

June 3, 1992

To: Jess Green O.I.G.A. Attorney
301 E. Main
Ada, Oklahoma 74820

Dear Jess,

I would like to update you on the recent information relayed to me by Michael Minnis, Attorney for the Citizen Band Potawatomi Indian Tribe.

During a meeting today between the Potawatomi and the State of Oklahoma, State Negotiator Bob Nance's main concern over "The Johnson Act" was that Governor Walters did not want to sign off on what he called a "CRIME". When asked what exactly he meant by that Nance said that last week when he had the meeting with all of the local United States District Attorneys, Tony Graham (U.S.D.A. from the Northern District) said that the governor might be prosecuted as a "Co-Conspirator" for violating the "The Johnson Act" should he sign a compact with an Indian Tribe authorizing video lottery terminals. This is truly a detrimental threat for federal authorities to privately impose upon the state.

I won't even try to rationalize Graham's intent with such a threat. However, it only adds to the seriousness of the situation that this type of harassment has imposed upon these two sovereigns.

I realize that it is not the position of the Oklahoma Indian Gaming Association to be a "Champion" for the protection of the Governor of the State of Oklahoma however, Oklahoma Indian Tribes' economic future through Congressional Intent to build more economic stability through gaming is at serious if not critical risk.

I am more confident than ever that this matter must be resolved as soon as possible. Should you feel it necessary to go to Washington D.C. to meet with the National Indian Gaming Commission and The Justice Department, I will call a special meeting of the Executive Committee to obtain approval for you and I to go there.

Sincerely,


David J. Qualls

JESS GREEN
ATTORNEY AT LAW

301 EAST MAIN
ADA, OKLAHOMA 74820

June 3, 1992

William Barr
United States Attorney General
Department of Justice
Washington, D.C. 20530

Dear Mr. Barr:

As attorney for the Oklahoma Indian Gaming Association, I am confronted by a truly unusual situation. The State of Oklahoma and different Indian tribes desire to enter a gaming compact. I am told by several tribes that negotiations for a compact pursuant to 25 USC §§ 2701-2721 (1988), commonly known as the Indian Gaming Regulatory Act or IGRA, have all but been completed between the state and the tribes. Moreover, I have been given assurances that such contemplated Class III compacts were expected to be approved by Tony Hope, Chairman of the National Indian Gaming Association and by the Secretary of the Interior or his designate. It appears, however, that the United States District Attorneys offices have contacted the Governor and taken a position that discourages the signing of a compact for Class III gaming with Indian tribes.

As a direct result of a private conference with the Oklahoma United States District Attorneys, the Governor's negotiator has taken the position that video pull tabs and other similar games are prohibited by the Johnson Act. This position taken privately by the United States District Attorneys seems certain to spark a substantial amount of litigation between the state and Indian tribes, encourage the Class III gaming without compact, and generally create a loss of confidence in the federal government by Indians and Indian tribes.

New regulations of IGRA recently proscribed have resulted in the closure of many games played at Indian gaming locations. As a consequence, some tribal gaming halls are either losing money or falling far below previous projections. Many tribes were hoping that the Class III compacts would be completed and allow resumption of those games. Many tribes are now contemplating resumption without compact of clearly Class III games.

Tribes need the gaming income and employment to maintain social programs and feed families.

Legal minds in Indian country agree that the issue of a compact contemplates legal activities is not for the

Page Two
Barr, William (con't)

local United States District Attorneys to decide, but rather for the Federal Indian Gaming Commission and the Secretary of the Interior.

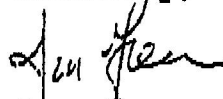
Indian tribes are following the law and do not object to federal review as outlined in the United States Code. Nonetheless, we Indians in Indian country feel that justice is not being served by the legal chill created by posturing of United States District Attorneys.

While I understand that it is not your policy to interfere with the United States District Attorney's office, you, Attorney General Barr, have in the past been quite helpful in posing questions and making inquiries that assisted in the resolution of problems in Indian country.

If you could make similar inquiries regarding this matter, perhaps much litigation could be avoided. If you cannot, I still thank you for the consideration you have given in regard to this letter.

Enclosed for your review is the letter of the President of the Oklahoma Indian Gaming Association, David Qualls. I believe he puts emphasis on the seriousness of the situation.

Sincerely,


Jess Green

JG/ke

encl.



100 S. Gordon Cooper Drive
 Ada, Oklahoma 74801
 (405) 273-0242 Fax (405) 273-0688

David J. Qualls, Chairman
 Robert R. Stephens, Vice Chairman
 Tim E. Harper, Secretary/Treasurer

June 1, 1992

To: Jess Green O.I.G.A. Attorney
 301 East Main
 Ada, Oklahoma 74820

Dear Jess,

I am quite concerned on behalf of the Association about the new problems in Class III gaming compact negotiations between the State of Oklahoma and various Oklahoma Tribes.

As of last Thursday May 28, 1992 I understand that the United States District Attorney's from all three districts of Oklahoma met with the state's negotiator Robert Nance about possible "Johnson Act" violations involved with the compact process.

The main problem I see is it appears to be that the opinion of the local U.S.D.A.'s that if Oklahoma agrees to compact with the Tribes for video lottery games (in which the state believes is legal under Oklahoma law) the "Johnson Act" would be violated if these devices were transported to and operated on Indian Land.

Nance has assured me that this is a problem initiated by the local U.S.D.A.'s and is not a problem sought out by Oklahoma.

Through many telephone conversations with Tony Hope, Chairman of The National Indian Gaming Commission, I have come to the conclusion that the local U.S.D.A.'s are erroneous in their opinions or some type of local bureaucratic political intervention is being initiated by the local U.S.D.A.'s otherwise, this problem would have surfaced in Minnesota and Wisconsin where broader forms of this type of gaming are being conducted under valid and approved compacts.

The Definition Regulations to the I.G.R.A. as published in *The Federal Register* on April 9, 1992 on page 12386 clearly state that the Johnson Act is specifically mentioned twice and expressly refers to the Act in 25 U.S.C. 2710(d)(6): "The provisions of section 5 of the Act of January 2, 1951 (64 Stat. 1135) [The Johnson Act] Shall not apply to any gaming conducted under a Tribal-State Compact.

The situation in Oklahoma concurs with the provisions outlined in the I.G.R.A. as it pertains to The Johnson Act because;

- Oklahoma's opinion is that these games are legal under state law.
- The compact process is following the guidelines of I.G.R.A.
- Oklahoma does permit such gaming by any person for any purpose.
- These devices under negotiation are merely video versions of bingo, lotto and Pull-Tabs, Not banking and games or facsimiles

I cannot see any violation of The Johnson Act in this process.

Is this opinion based upon local policy of the U.S.D.A.'s or is this the policy of The Justice Department?

PAGE 2

I would like for you to investigate this matter and use your resources to try to help clear up this matter with extreme priority.

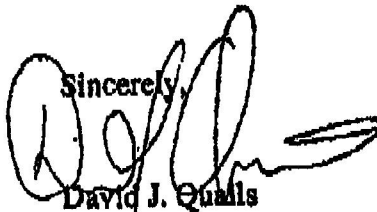
I fear if this is not resolved in a timely manner that litigation will soon follow due to the 180 day time limit has already expired with the state in most of these compact requests.

Keep in mind that the State of Oklahoma was within hours of reaching an agreement with both the Citizen Band Potawatomi and the Cheyenne/Arapaho Tribes until this question arose out of the local U.S.D.A.'s office.

Congress intended for Tribes to operate gambling devices and utilize electronic technology for economic development. Some by Class II and the rest by Class III.

The Justice Department as well as the N.I.G.C. have a trust responsibility to Indian tribes however, it seems that there are conflicting opinions which is seriously affecting the negotiations between these two sovereigns (Oklahoma & Various Tribes).

This matter seriously affects the opinion of Indian People in regards to the federal Justice system.

Sincerely,

David J. Qualls
President, O.I.G.A.

Jess Green

Attorney at Law

301 E. Main, Ada, OK 74820

405-436-1946

Fax No. 405-332-5180

FAX

To: William Burr 202-514-4507

From: Jess Green

Date: 6-5-92 TIME: 3:50

Number of Pages: 8 (including cover page)

Subject: Indecent Grooming Complaints

JESS GREEN
ATTORNEY AT LAW

301 EAST MAIN
ADA, OKLAHOMA 74820

RECEIVED
DEPARTMENT OF JUSTICE

June 3, 1992

'92 JUN -5 11:15

EXECUTIVE SECRETARY

William Barr
United States Attorney General
Department of Justice
Washington, D.C. 20530

Dear Mr. Barr:

As attorney for the Oklahoma Indian Gaming Association, I am confronted by a truly unusual situation. The State of Oklahoma and different Indian tribes desire to enter a gaming compact. I am told by several tribes that negotiations for a compact pursuant to 25 USC §§ 2701-2721 (1988), commonly known as the Indian Gaming Regulatory Act or IGRA, have all but been completed between the state and the tribes. Moreover, I have been given assurances that such contemplated Class III compacts were expected to be approved by Tony Hope, Chairman of the National Indian Gaming Association and by the Secretary of the Interior or his designate. It appears, however, that the United States District Attorneys offices have contacted the Governor and taken a position that discourages the signing of a compact for Class III gaming with Indian tribes.

As a direct result of a private conference with the Oklahoma United States District Attorneys, the Governor's negotiator has taken the position that video pull tabs and other similar games are prohibited by the Johnson Act. This position taken privately by the United States District Attorneys seems certain to spark a substantial amount of litigation between the state and Indian tribes, encourage the Class III gaming without compact, and generally create a loss of confidence in the federal government by Indians and Indian tribes.

Low regulations of IGRA recently proscribed have resulted in the closure of many games played at Indian gaming locations. As a consequence, some tribal gaming halls are either losing money or falling far below previous projections. Many tribes were hoping that the Class III compacts would be completed and allow resumption of those games. Many tribes are now contemplating resumption without compact of clearly Class III games.

Indian tribes need the gaming income and employment to maintain cultural programs and feed families.

Legal minds in Indian country agree that the issue of whether a compact contemplates legal activities is not for the

Page Two

Barr, William (con't)

local United States District Attorneys to decide, but rather for the Federal Indian Gaming Commission and the Secretary of the Interior.

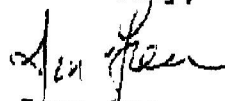
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Enclosed for your review is the letter of the President of the Oklahoma Indian Gaming Association, David Qualls. I believe he puts emphasis on the seriousness of the situation.

Sincerely,



Jess Green

JG/ke

enc 1



8. Avenue Cooper Drive
Ada, Oklahoma 74802
Fax (405)-273-0688

David J. Qualls, Chairman
Robert R. Stephens, Vice Chairman
Tim E. Harper, Secretary/Treasurer

June 1, 1992

To: Jess Green O.I.G.A. Attorney
301 East Main
Ada, Oklahoma 74820

Dear Jess,

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- Oklahoma's opinion is that these games are legal under state law.
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- Oklahoma does permit such gaming by any person for any purpose.
- These devices under negotiation are merely video versions of bingo, lotto and Pull-Tabs, Not banking card games or facsimiles.

I do not see any violation of The Johnson Act in this process.

Is this opinion based upon local policy of the U.S.D.A.'s or is this the policy of The Justice Department?

Jess Green

Attorney at Law

301 E

K 74820

Miss sent to OJP

70

To: GeneralFrom: Jess GreenDate: 6 3 92TIME: 4:15 pNumber of Pages: 5 (including cover page)Subject: Indian Gaming

DEPARTMENT OF JUSTICE
EXECUTIVE SECRETARIAT CONTROL DATA SHEET

From: DANNEMEYER, CONG. WILLIAM E.

To: AG.

ODD: 06-17-92

Date Received: 06-02-92 Date Due: 06-17-92 Control #: X92060308512

Subject & Date

05-28-92 LETTER EXPRESSING CONCERN REGARDING THE INTRA-TRIBAL DISPUTE WITHIN THE CHEMEHUEVI INDIAN TRIBE AT LAKE HAVASU, CA. THE CONGRESSMAN PROVIDES AN UP-TO-DATE ACCOUNT WITH THE BASICS OF THIS MATTER. REQUESTS THAT ALL ACTIONS BEING PURSUED BY BIA AND/OR THE INTERIOR DEPARTMENT BE SUSPENDED, AND THAT THE U.S. ATTORNEY DECLINE PROSECUTION UNTIL THE CONSTITUTIONAL AMENDMENT AND SUBSEQUENT ELECTIONS HAVE BEEN COMPLETED AND A TRIBAL COUNCIL REPRESENTATIVE **

Referred To: Date: Referred To: Date:

(1) EOA;McWHORTER 06-03-92

(5)

W/IN:

(2) (6)

(3) (7)

PRTY:

(4) (8)

1

INTERIM BY:

DATE:

OPR:

Sig. For: OLA

Date Released: 11-12-92

MLH

Remarks

** OF THE PEOPLE AND RECOGNIZED BY THE SECRETARY OF THE INTERIOR HAS A CHANCE TO ADDRESS THE ISSUE AND TO NEGOTIATE PROPER LEASES FOR THE FAMILIES NOW RESIDENT AT HAVASU LANDING RESORT. ALSO REQUESTS THAT ALL INVESTIGATIONS BEING CONDUCTED BE COMPLETED AS SOON AS POSSIBLE. EXEC SEC SENT COPIES TO OAG, OAG (STEVENS), DAG, FBI, ENR, OLA (DeSANCTIS). ORIGINAL TO AG FILES.

Other Remarks:

(1) PREPARE RESPONSE FOR AAG/OLA SIGNATURE AND RETURN TO EXEC. SEC., ROOM 4400-AA, WITH COPY OF INCOMING CORRSP., FOR TRANSMITTAL TO OLA. SEE E.S. 92060808794 AND 92062209447. 11-12-92. OLA REPLIED BY LETTER DATED 10-09-92. COPY TO LEG FILES AND AG FILES. (LH)
OLA CONTACT: JOE DeSANCTIS (514-2111)

FILE: INDIAN AFFAIRS

REMOVE THIS CONTROL SHEET PRIOR TO FILING AND DISPOSE OF APPROPRIATELY

Q/c 28 May 92



U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

OCT 9 1992

The Honorable William E. Dannemeyer
Member, U.S. House of Representatives
1235 North Harbor Boulevard
Suite 100
Fullerton, California 91632

Attention: Mike Bonk

Dear Congressman Dannemeyer:

This is in reply to your letters of May 28, 1992 to Attorney General Barr and United States Attorney George O'Connell. I have checked with the various United States Attorneys' Offices in Arizona and California. It is the United States Attorney's Office for the Central District of California that is handling this matter for the Department of the Interior.

The United States Attorney's Office has, at the request of the Department of Interior, filed ejectment actions against ten of the non-Indian tenants currently residing on Indian lands without making proper payment. These ejectment actions are compelled by current DOI regulations and would have been taken no matter what the status of the tribal dispute.

The leases enjoyed by the tenants were not cancelled, but were in fact, year-to-year leases that have lapsed. Attorneys for the Bureau of Indian Affairs (BIA) and the Tribe have been negotiating for a year with the tenants trying to renew the leases. The main problems have seemed to be that under applicable Interior regulations, the rent must increase from \$150 a month to \$200 a month, and the refusal of a request by the tenants that the Tribe waive its sovereign immunity rights.

As to the issue of the Tribal dispute, BIA has advised the tenants as to who is to receive payment and has been an active part of the lease negotiations. The Secretary of the Interior has had appraisals done and made an independent review. Whatever the status of any dispute as to the Tribal Council, it has no bearing on the situation as between the Tribe and Tenants.

I hope this addresses the concerns that you have raised. If I may be of further assistance, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read 'W. Lee Rawls', with a stylized flourish at the end.

W. Lee Rawls
Assistant Attorney General



Congress of the United States
House of Representatives
Washington, D.C. 20515

WILLIAM E. DANNEMEYER
39TH DISTRICT, CALIFORNIA

COMMITTEES:
ENERGY AND COMMERCE
BUDGET

May 28, 1992

Hon. William Barr
Attorney General of the United States
Main Justice Building
Room 5111
Washington, DC ZIP

Dear Mr. Barr:

As you may already be aware, my office is deeply involved in trying to find a solution to the highly volatile intra-tribal dispute within the Chemehuevi Indian Tribe at Lake Havasu, California. Unfortunately, there is a tremendous amount of disinformation circulating about this situation. Therefore I would like to take this opportunity to bring you up to date with the basics of this matter:

- The current tribal council, as recognized by the Bureau of Indian Affairs, is under investigation by the Inspectors General of both HUD and Interior . . . and other agencies. Tribal records were seized by investigators with support from the FBI and San Bernardino County Sheriff's Office on April 23, 1992, and the council members fled the reservation. The council has established itself as a government-in-exile off the reservation.
- A large number of tribal members have tried to recall and/or replace the present council members for several years, but have been unable to because of the control given the council under the tribal constitution and elections ordinance. At a general tribal meeting held on April 25, the council was voted out of office for desertion and dereliction of duty, and an Interim Tribal Council was elected in their stead. The membership believed this to be within their authority; however, clear constitutional authority for their actions appears to be lacking.
- The membership does have clear authority to amend their constitution without the participation of the council, by petitioning the Secretary of the Interior directly. Such action is under way, and should be completed shortly, returning control of the election process to the membership.

EXECUTIVE SECRETARIAT

92 JUN -2 P4:53

OFFICE OF THE ATTORNEY GENERAL

- While the absent council had been pursuing the possibility of developing a major casino on the reservation, the main tribal business (and source of tribal income and employment) remains the Havasu Landing Resort – a small boating, fishing and recreational marina and rental vacation home development. Among the actions initiated by the absent council is the eviction of most or all of their renters. Having found that all existing leases could be declared invalid due to procedural errors in their approval, the council refused to negotiate in good faith for new leases, and has requested that the BIA pursue trespass actions. While the tribal membership is overwhelmingly opposed to the gaming proposal and to the eviction actions, the BIA has stated its intention to continue to pursue trespass evictions as quickly as possible.
- Although there are serious questions about the way in which the developed area of the reservation – along the shoreline of Lake Havasu – was added to the tribal trust lands, there is no effort under way to challenge this. The homeowners whose leases were cancelled appear to be unanimous in the hope that the tribe will retain its land and continue to operate the resort and lease properties.

At present, it is clearly a matter of when – not if – the Chemehuevi Tribe will replace the exiled tribal council under a newly amended tribal constitution. Until that time, it would appear to be in the best interests of the tribe, the government and the homeowners to maintain the *status quo*. The Interim Tribal Council is conducting the day-to-day business of the tribe, which the exiled council cannot do off the reservation. At the same time, the exiled council – due to years of oppression of the tribal members – cannot return to the reservation without a very real risk of violence.

Given the charges of malfeasance which have been made against the exiled council, the possibility that indictments will be forthcoming, and the certainty that the tribal membership – when it regains control – will want to negotiate fair leases with its present tenants, it would appear to go against every sense of fairness and equity for the trespass actions to be pursued while this matter is resolved. Therefore I request that the BIA cancel or at least suspend those cases; I request that the Phoenix Field Solicitor for the Department of the Interior cancel or suspend the cases if the BIA does not; and I request the U.S. Attorney in Los Angeles . . . or San Diego, Phoenix or anywhere else that Interior might attempt to pursue these cases . . . decline prosecution, or at the very least assign this a sufficiently low priority to assure that this does not reach District Court until the constitutional amendment and subsequent elections have been completed and a tribal council representative of the people and recognized by the Secretary of the Interior has a chance to address the issue and to negotiate proper leases with the 400+ families now resident at Havasu Landing Resort.

In the meantime, I am asking that those agencies conducting investigations into those documents seized from the reservation direct all necessary resources to complete their

May 28, 1992

page 3

actions as quickly as possible. The new tribal government will need much of that information to be able to get the tribe's affairs in order, once they take office.

I would welcome your response to this situation, and any suggestions you might have as to legislation which might be pursued to prevent similar problems elsewhere ... or indeed to improve the entire matter of federal Indian policy, which in its present form does not adequately provide for the needs or rights of Indians and non-Indians alike. Please direct any questions to Mike Bonk, in my Fullerton office, who is easily the most knowledgeable individual on this matter.

Thank you for your courtesy and consideration in this matter.

Sincerely,


WILLIAM E. DANNEMEYER
Member of Congress

WED:mb

Circulation:

President George Bush
Hon. Sam Skinner, Chief of Staff
Vice President Dan Quayle
Hon. Manuel Lujan Jr., Secretary of the Interior
R. Thomas Welmer, Chief of Staff
Thomas L. Sansonetti, Solicitor
Jill Fallon, Associate Solicitor
Fritz Goreham, Phoenix Field Solicitor
Kitty Miller, Associate Solicitor
James R. Richards, Inspector General
Thomas T. Sheehan, Investigations
Gordon Peterson, Western Region SAIC
Steve Lunsford, Chief Investigator
Eddie Frank Brown, Assistant Secretary, Office of Indian Affairs
Ray Albert, Special Assistant
Wilson Barber Jr., Phoenix Area Director, BIA
Linus Brown, Superintendent, Colorado River Agency
Hon. William Barr, Attorney General
Lourdes G. Baird, US Attorney, Los Angeles
William Braniff, US Attorney, San Diego
Linda Akers, US Attorney, Phoenix
William T. McGivern Jr., US Attorney, San Francisco
George L. O'Connell, US Attorney, Sacramento
Ron Heller, SAIC, FBI-Riverside
Donald Laing, Supervisor, FBI-Victorville
Hon. Jack Kemp, Secretary of Housing and Urban Development
Paul A. Adams, Inspector General
Hon. Rod Chandler, Member of Congress
Hon. Chris Cox, Member of Congress
Hon. Bob Dornan, Member of Congress
Hon. Jerry Lewis, Member of Congress
Hon. Carlos Moorhead, Member of Congress
Dick Williams, San Bernardino County Sheriff
Matthew Leivas Sr., Interim Tribal Council Chairman
Jim Whited, President, Havasu Landing HOA
Christine Goodman Walker

DOJ EXECUTIVE SECRETARIAT CROSS-REFERENCE RECORD



CONTROL NUMBER: 92052908318

WEAVER, FRAMON, MOWA Band of Choctaw

THE ENTIRE DOCUMENT PACKET FOR THE CONTROLLED
CORRESPONDENCE INDICATED BY THE ABOVE EX.SEC.
CONTROL NUMBER HAS BEEN FILED IN THE FOLLOWING
PRIMARY FILE LOCATION WITHIN THE SUBJECT FILES
OF THE ATTORNEY GENERAL.

PRIMARY FILE: REDISTRICTING

26 MAY 1992

DEPARTMENT OF JUSTICE
EXECUTIVE SECRETARIAT CONTROL DATA SHEET

From: STEPHENS, ALAN, SEN. MAJORITY LEADER, ARIZONA STATE SENATE
To: AG. ODD: 06-09-92
Date Received: 05-26-92 Date Due: 08-03-92 Control #: X920526080639

Subject & Date

05-22-92 LETTER (FAX REC'D FROM OAG) REGARDING A SITUATION INVOLVING THE U.S. ATTORNEY'S OFFICE AND SEVERAL INDIAN TRIBES IN ARIZONA WITH RESPECT TO THE ISSUE OF CLASS III INDIAN GAMING ON THE RESERVATIONS. FBI AGENTS, UPON THE DIRECTION AND AUTHORIZATION OF THE U.S. ATTORNEY RAIDED FIVE RESERVATIONS SEEKING TO CONFISCATE VARIOUS GAMING MACHINES. THE U.S. ATTORNEY REFUSES TO RETURN CONTROL OF THE CONFISCATED GAMING MACHINES TO THE TRIBES THEREBY **

Referred To:	Date:	Referred To:	Date:	
(1) DAG;TERWILLIGE	07-27-92	(5)		W/IN:
(2)		(6)		
(3)		(7)		PRTY:
(4)		(8)		1
INTERIM BY:		DATE:		OPR:
Sig. For: DAG		Date Released: 02-18-93		EHZ

Remarks

(1) W/MEMO FROM EOA/MCWHORTER TO THE DAG DATED 07-23-92 SUBMITTING PREPARED RESPONSE FOR DAG SIGNATURE. (MAU) 02-18-93. ADMINISTRATIVELY CLOSED OUT PER EXEC. SEC. (YAHN) ON 02-10-93. NOTE: A CHECK WITH EOA REVEALED THAT THEY DO NOT PROPOSE ANY FURTHER ACTION UNLESS DIRECTED BY THE DAG'S OFFICE.

Other Remarks:

OLA CONTACT:
TO JEFF HOWARD FOR REVIEW 7/27/92
FILE: INDIAN AFFAIRS

CROSS REFERENCE:

1: Gambling

REMOVE THIS CONTROL SHEET PRIOR TO FILING AND DISPOSE OF APPROPRIATELY

DEPARTMENT OF JUSTICE
EXECUTIVE SECRETARIAT CONTROL DATA SHEET

From: STEPHENS, ALAN, SEN. MAJORITY LEADER, ARIZONA STATE SENATE
To: AG. ODD: 06-09-92
Date Received: 05-26-92 Date Due: 06-09-92 Control #: X92052608063
Subject & Date

05-22-92 LETTER (FAX REC'D FROM OAG) REGARDING A SITUATION INVOLVING THE U.S. ATTORNEY'S OFFICE AND SEVERAL INDIAN TRIBES IN ARIZONA WITH RESPECT TO THE ISSUE OF CLASS III INDIAN GAMING ON THE RESERVATIONS. FBI AGENTS, UPON THE DIRECTION AND AUTHORIZATION OF THE U.S. ATTORNEY RAIDED FIVE RESERVATIONS SEEKING TO CONFISCATE VARIOUS GAMING MACHINES. THE U.S. ATTORNEY REFUSES TO RETURN CONTROL OF THE CONFISCATED GAMING MACHINES TO THE TRIBES THEREBY **

	Referred To:	Date:		Referred To:	Date:	
(1)	EOA;McWHORTER	05-26-92	(5)			W/IN:
(2)			(6)			
(3)			(7)			PRTY:
(4)			(8)	DAG;TERWILLIGE	07-27-92	1
	INTERIM BY:			DATE:		OPR:
	Sig. For:	DAG		Date Released:	SEE 9	EHZ

Remarks

** INFLICTING SEVERE FINANCIAL HARDSHIPS ON THE TRIBES. SEEKS THE AG'S DIRECT INTERVENTION IN THIS CASE. (SEE EXEC. SEC. 92052208014 & 92052208008 CONTROL SHEETS ATTACHED.)

INFO CC: OAG, DAG, CRM, OPC/OLS.

(1) PREPARE RESPONSE FOR DAG SIG. RETURN CONTROL SHEET &

Other Remarks:

INCOMING CORRES. THRU EXEC. SEC., ROOM 4400-AA, FOR FORWARDING TO DAG.

05-27-92 ORIGINAL LETTER REC'D IN EXEC. SEC. & FORWARDED TO AG FILES. (EHZ)

OLA CONTACT:

MWC 5-26-92

FILE: INDIAN AFFAIRS

CROSS REFERENCE:

1. Gambling

REMOVE THIS CONTROL SHEET PRIOR TO FILING AND DISPOSE OF APPROPRIATELY

Action Memorandum

ATTORNEY GENERAL/DEPUTY ATTORNEY GENERAL/ASSOCIATE ATTORNEY GENERAL

Subject Issues of Class III Indian Gaming on reservations	Date JUL 23 1992
--	----------------------------

TO: George J. Terwilliger, III
Deputy Attorney General
Thru: Jeffrey R. Howard, Principal
Summary: Associate Deputy Attorney General

FROM: Laurence S. McWhorter
Director, Executive Office
for U.S. Attorneys

Situation involving the U.S. Attorney's Office and Indian Tribes
in Arizona with respect to the issue of Class III gaming on the
reservations.

Action Required:

signature

**Due Date/Action
Forcing Event:**

DOJ Coordination: Division/Component and Views (attach comments
if other than concurrence)

Concurrences:	DAG	ASG	OLC	OPD	OLA	PAO	JMD
Initials	x						
Date							

External Coordination: Agency and Views (attach comments if other
than concurrence).

**Contact Point for
Additional Information:** Louis DeFalaise (616-2128)

FOIA # 60048 (URTS 16457) DocId: 70106674 Page 82

NARA-18-1003-A-002622



Office of the Deputy Attorney General

Washington, D.C. 20530

The Honorable Alan Stephens
Senate Majority Leader
Arizona State Senate
Phoenix, Arizona 85007

Dear Mr. Stephens:

The Attorney General has asked me to respond to your letter of May 22, 1992 concerning the Fort McDowell situation. He is deeply concerned about the matters you raise, as is the United States Attorney for the District of Arizona. She has kept the Department informed about this situation as it has developed.

As you know the question of operating gambling establishments on Indian reservations is not confined to Arizona. It is a national problem. Congress sought to give a definitive answer to these concerns by passage of the Indian Gambling Regulation Act (IGRA) and the establishment of the National Indian Gaming Commission which includes Native American representation. The new law became effective in October of 1988 and the Commission has recently promulgated regulations clarifying provisions of the Act.

In essence, the statute provides for the operation of Class III gaming activities (essentially all forms of commercial gaming except bingo and card games conducted in compliance with state law) on Indian reservations as long as it is conducted in accordance with Tribal-State compacts. Absent such a compact, these forms of gaming, including electronic facsimiles of games of chance and slot machines, are a violation of federal law. IGRA makes it a specific federal crime. Furthermore, in the absence of a compact, possession of such gambling devices on Indian country violate the Johnson Act, 15 U.S.C. § 1175, and the conduct of a gambling business in violation of state law violates the Organized Crime Control Act, 18 U.S.C. § 1555.

In deference to the sensibilities of both the State of Arizona and the Indian communities, the United States Attorney for Arizona has given the tribes every opportunity to comply with the law before initiating enforcement action. As early as November 6, 1991, she sent letters to all Tribal Chairmen with copies to the Governor and Attorney General of Arizona pointing out provisions of the IGRA and the need for the various Tribes to bring themselves into compliance by negotiating a compact with the state. Under IGRA, Arizona of course, has an ongoing obligation to negotiate with the Tribes in good faith.

The United States Attorney asked the tribes to comply by January 1, 1992, or suspend their illegal operations until a compact was obtained. Her letter was one of many communications with the parties and their lawyers. On April 7, 1991, she sent another letter again urging the parties to comply with applicable laws or face enforcement action.

It should be noted that, following these communications, certain tribes brought suit against Arizona to force the State to negotiate a compact in good faith. The Fort McDowell Tribe, however, did not pursue this legal remedy as provided under IGRA. Instead, this Tribe continued its operations, thereby creating an open and notorious violation of federal criminal law.

It should also be noted that the Federal Court issued the warrant under which the Fort McDowell gambling devices were seized upon a finding that their presence was a violation of Federal law, and only the Fort McDowell Tribe resisted the court's seizure order outside the judicial process.

The Federal Government has in good faith tried to deal with the issues raised by the Indian communities on this issue, including their economic and internal control concerns. But the Government must also deal with the problems of the nation as a whole, inherent in the wholesale opening of gambling establishments throughout the country on Indian lands. Gambling, because of the large sums of money involved, has traditionally been prey to all types of criminal activity, including racketeering. The members of the Indian communities are entitled to the same protection as are all citizens from further exploitation.

Even after long delays, the United States Attorney has sought to proceed in the least confrontational way to have the involved parties comply with the law. Ms. Akers also sought to proceed in the least punitive manner possible electing to utilize the civil forfeiture process rather than criminal prosecution as a first step. She has proceeded through the courts at every step allowing the parties to assert their interests. She has also sought to conduct the seizure under the process of law to minimize the danger of injury to anyone involved. When a confrontation did develop, she did not force the situation, but withdrew to bring the parties back into the courts.

At every step the United States Attorney has demonstrated ample restraint and understanding while trying to carry out her sworn duty to uphold the law. As to potential damage to the electronic gambling equipment, she has expressed her concern about possible heat damage to the Tribe's lawyers on a number of occasions. She suggested removing the equipment to a more protected situation while matters were resolved in court, but was rebuffed.

In short, it would appear that the resolution of this situation lies in prompt compliance by Arizona and the Indian communities with the law and their obligation to negotiate in good faith. The Justice Department was pleased to learn of the parties entering into serious negotiations.

The United States Attorney has been committed to seeking a just, lawful, and peaceful end to this matter. The Justice Department will do all that it is permitted to do under the law to facilitate this process.

Sincerely,

George J. Terwilliger, III
Deputy Attorney General

cc: Linda Akers
United States Attorney
District of Arizona

ALAN STEPHENS
DISTRICT 6

STATE SENATOR
FORTIETH LEGISLATURE

CAPITOL COMPLEX, SENATE BUILDING
PHOENIX, ARIZONA 85007
PHONE (602) 542-4178
TOLL FREE 1-800-352-8404
FAX (602) 542-3429

MAJORITY LEADER

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COMMITTEE
JOINT LEGISLATIVE TAX
COMMITTEE
LEGISLATIVE COUNCIL

Arizona State Senate

Phoenix, Arizona

May 22, 1992

THE HONORABLE WILLIAM BARR
ATTORNEY GENERAL
U S DEPARTMENT OF JUSTICE
10TH ST & CONSTITUTION AVE NW
WASHINGTON D C 20530

Dear General Barr:

I am writing to seek your direct intervention in a situation involving the U.S. Attorney's office and several Indian tribes in Arizona with respect to the issue of Class III Indian gaming on the reservations.

On May 12, 1992, agents of the Federal Bureau of Investigation, (F.B.I.) upon the direction and authorization of U.S. Attorney Linda Akers, raided five reservations in Arizona seeking to confiscate various Class III gaming machines.

This action took place while negotiations between the various tribes and the State of Arizona on a gaming compact(s) were taking place and prior to the issuance of a relevant federal court decision.

Following the F.B.I. raid, the Governor of Arizona increased the pace of the compact negotiations and, yesterday, a critical impasse was broken between the State and the Tribes which will lead to a finalized compact before long.

In the meantime, however, U.S. Attorney Akers, refuses to return control of the confiscated Class III gaming machines to the tribes thereby inflicting severe financial hardships on the tribes and their ability to fund their various tribal government programs and services. Further, jobs are being lost while this matter works its way through the process toward resolution.

In other words, despite the fact that the clear intent of both the State of Arizona and the tribes is to consummate an agreement, those who can least afford to suffer financial and economic burdens are being made to pay the price for the slow speed with which government responds to this situation.

EXECUTIVE SECRETARIAT

92 MAY 27 NO:37

RECEIVED

PAGE 2
May 22, 1992

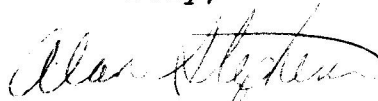
The net result is that productive wage earners are being turned into welfare recipients, and self-sufficient tribal governments are being forced into dependency. Certainly this cannot be the policy objective of the U.S. Justice Department or the Administration.

U.S. Attorney Akers has been asked to return the confiscated machines to the tribes so that they can avoid this hardship during the period of time in which the final negotiations are taking place. She has refused.

Therefore, I am asking that you intervene in this case and direct Ms. Akers to return control of the confiscated machines to the tribes so that they may continue to collect from their primary source of non-government revenue during this interim period.

Your expedited consideration and favorable response to this request will be appreciated, and can only serve to ease the hardship which has already started.

Sincerely,



Alan Stephens
Senate Majority Leader
Arizona State Senate

AS/rb

cc: The Honorable George W. Bush, President of the United States
The Honorable J. Fife Symington, Governor, State of Arizona
The Honorable Dennis DeConcini, U.S. Senator
The Honorable John McCain, U.S. Senator
The Honorable Grant Woods, Attorney General, State of Arizona
The Honorable Peter Rios, President, Arizona State Senate
The Honorable Jane Dee Hull, Speaker, Arizona House of Representatives

DEPARTMENT OF JUSTICE
EXECUTIVE SECRETARIAT CONTROL DATA SHEET

From: AKERS, LINDA A., U.S. ATTORNEY, DISTRICT OF ARIZONA
To: AG. ODD: 06-05-92
Date Received: 05-22-92 Date Due: 08-03-92 Control #: X920522080149
Subject & Date

05-22-92 "DEAR BILL" LETTER (FAX) ADVISING THAT SHE IS IN RECEIPT OF A COPY OF THE LETTER OF MAY 21, 1992, TO THE AG FROM MR. KIMBLE, ASSOCIATION ON AMERICAN INDIAN AFFAIRS (COPY ATTACHED), AND WANTED THE AG TO HAVE HER THOUGHTS BEFORE RESPONDING. RELATES THE DETAILS SURROUNDING THE RECENT EXECUTION OF THE SEIZURE WARRANT ON THE FT. McDOWELL RESERVATION. SHE HOPES THIS HELPS THE AG TO RESPOND TO MR. KIMBLE'S LETTER, W/ATTACHMENTS.

Referred To:	Date:	Referred To:	Date:	
(1) DAG;TERWILLIGE	07-27-92	(5)		W/IN:
(2)		(6)		
(3)		(7)		PRTY:
(4)		(8)		1
INTERIM BY:		DATE:		OPR:
Sig. For: DAG		Date Released: 02-18-93		EHZ

Remarks

(1) W/MEMO FROM EOA/MCWHORTER TO THE DAG DATED 07-23-92 SUBMITTING PREPARED RESPONSE FOR DAG SIGNATURE. (MAU) 02-18-93. ADMINISTRATIVELY CLOSED OUT PER EXEC. SEC. (YAHN). NOTE: A CHECK WITH EOA REVEALED THAT THEY DO NOT PROPOSE ANY FURTHER ACTION UNLESS DIRECTED BY THE DAG'S OFFICE.

Other Remarks:

OLA CONTACT:

FILE: INDIAN AFFAIRS

CROSS REFERENCE:

1: Gambling

REMOVE THIS CONTROL SHEET PRIOR TO FILING AND DISPOSE OF APPROPRIATELY

DEPARTMENT OF JUSTICE
EXECUTIVE SECRETARIAT CONTROL DATA SHEET

From: AKERS, LINDA A., U.S. ATTORNEY, DISTRICT OF ARIZONA
To: AG. ODD: 06-05-92
Date Received: 05-22-92 Date Due: 08-03-92 Control #: X92052208014
Subject & Date

05-22-92 "DEAR BILL" LETTER (FAX) ADVISING THAT SHE IS IN
RECEIPT OF A COPY OF THE LETTER OF MAY 21, 1992, TO THE AG
FROM MR. KIMBLE, ASSOCIATION ON AMERICAN INDIAN AFFAIRS
(COPY ATTACHED), AND WANTED THE AG TO HAVE HER THOUGHTS
BEFORE RESPONDING. RELATES THE DETAILS SURROUNDING THE
RECENT EXECUTION OF THE SEIZURE WARRANT ON THE FT. McDOWELL
RESERVATION. SHE HOPES THIS HELPS THE AG TO RESPOND TO
MR. KIMBLE'S LETTER, W/ATTACHMENTS.

	Referred To:	Date:		Referred To:	Date:	
(1)	CRM;MUELLER	05-22-92	(5)			W/IN:
(2)	EOA;McWHORTER	05-26-92	(6)			
(3)			(7)			PRTY:
(4)			(8)	DAG;TERWILLIGE	07-27-92	1
	INTERIM BY:			DATE:		OPR:
	Sig. For: DAG			Date Released: SEE "9"		EHZ

Remarks

(SEE EXEC. SEC. 92052208008 CONTROL SHEET ATTACHED.)

INFO CC: OAG, DAG, EOA, OPC/OLS.

(1) RETURN CONTROL SHEET W/COPY OF SIGNED AND DATED RESPONSE
TO EXEC. SEC. ROOM 4400-AA.

(2) REASSIGNED TO EOA TO PREPARE RESPONSE FOR DAG SIG.
RETURN CONTROL SHEET AND INCOMING CORRESPONDENCE THRU

Other Remarks:

EXEC. SEC., ROOM 4400-AA, FOR FORWARDING TO DAG. (EHZ)
05-29-92: ORIGINAL REC'D IN EXEC. SEC. ON 05-28-92 AND
FORWARDED TO AG FILES. (MAU)

OLA CONTACT:

TO JEFF HOWARD 7/27/92 FOR REVIEW
FILE: INDIAN AFFAIRS

REMOVE THIS CONTROL SHEET PRIOR TO FILING AND DISPOSE OF APPROPRIATELY

Action Memorandum

ATTORNEY GENERAL/DEPUTY ATTORNEY GENERAL/ASSOCIATE ATTORNEY GENERAL

Subject Details surrounding the recent execution of the seizure warrant on the Ft. McDowell Reservation.	Date JUL 23 1992
--	----------------------------

TO: George J. Terwilliger, III
Deputy Attorney General
Thru: Jeffrey R. Howard, Principal
Summary: Associate Deputy Attorney General

FROM: Laurence S. McWhorter,
Director, Executive Office
for U.S. Attorneys

Seizure warrant on the Ft. McDowell Reservation.

Action Required: Signature _____

Due Date/Action Forcing Event: _____

DOJ Coordination: Division/Component and Views (attach comments if other than concurrence)

Concurrences:	DAG	ASG	OLC	OPD	OLA	PAO	JMD
Initials	x						
Date							

External Coordination: Agency and Views (attach comments if other than concurrence).

Contact Point for Additional Information: Louis DeFalaise (616-2128)

FOIA # 60048 (URTS 16457) DocId: 70106674 Page 90

NARA-18-1003-A-002630



Office of the Deputy Attorney General

Washington, D.C. 20530

Honorable Linda Akers
United States Attorney
District of Arizona
Phoenix, Arizona 85025

Dear Linda:

This is in response to your letter of May 22, 1992, concerning the American Indian Affairs. Enclosed are replies to Gary Kimble of America Indian Affairs and Alan Stephens of the Arizona State Senate for your convenience.

Please contact my office if I can be of further assistance.

Sincerely,

George J. Terwilliger, III
Deputy Attorney General

Enclosures

Mr. Gary N. Kimble
Executive Director
American Indian Affairs
New York, New York 10016-8728

Dear Mr. Kimble:

The Attorney General has asked me to respond to your letter of May 21, 1992 concerning the Fort McDowell situation. He is deeply concerned about the matters you raise, as is the United States Attorney for the District of Arizona. She has kept the Department informed about this situation as it has developed.

As you know the question of operating gambling establishments on Indian reservations is not confined to Arizona. It is a national problem. Congress sought to give a definitive answer to these concerns by passage of the Indian Gambling Regulation Act (IGRA) and the establishment of the National Indian Gaming Commission which includes Native American representation. The new law became effective in October of 1988 and the Commission has recently promulgated regulations clarifying provisions of the Act.

In essence, the statute provides for the operation of Class III gaming activities (essentially all forms of commercial gaming except bingo and card games conducted in compliance with state law) on Indian reservations as long as it is conducted in accordance with Tribal-State compacts. Absent such a compact, these forms of gaming, including electronic facsimiles of games of chance and slot machines, are a violation of federal law. IGRA makes it a specific federal crime. Furthermore, in the absence of a compact, possession of such gambling devices on Indian country violate the Johnson Act, 15 U.S.C. § 1175, and the conduct of a gambling business in violation of state law violates the Organized Crime Control Act, 18 U.S.C. § 1555.

In deference to the sensibilities of both the State of Arizona and the Indian communities, the United States Attorney for Arizona has given the tribes every opportunity to comply with the law before initiating enforcement action. As early as November 6, 1991, she sent letters to all Tribal Chairmen with copies to the Governor and Attorney General of Arizona pointing out provisions of the IGRA and the need for the various Tribes to bring themselves into compliance by negotiating a compact with the state. Under IGRA, Arizona of course, has an ongoing obligation to negotiate with the Tribes in good faith.

The United States Attorney asked the tribes to comply by January 1, 1992, or suspend their illegal operations until a compact was obtained. Her letter was one of many communications with the parties and their lawyers. On April 7, 1991, she sent another letter again urging the parties to comply with applicable laws or face enforcement action.

It should be noted that, following these communications, certain tribes brought suit against Arizona to force the State to negotiate a compact in good faith. The Fort McDowell Tribe, however, did not pursue this legal remedy as provided under IGRA. Instead, this Tribe continued its operations, thereby creating an open and notorious violation of federal criminal law.

It should also be noted that the Federal Court issued the warrant under which the Fort McDowell gambling devices were seized upon a finding that their presence was a violation of Federal law, and only the Fort McDowell Tribe resisted the court's seizure order outside the judicial process.

The Federal Government has in good faith tried to deal with the issues raised by the Indian communities on this issue, including their economic and internal control concerns. But the Government must also deal with the problems of the nation as a whole, inherent in the wholesale opening of gambling establishments throughout the country on Indian lands. Gambling, because of the large sums of money involved, has traditionally been prey to all types of criminal activity, including racketeering. The members of the Indian communities are entitled to the same protection as are all citizens from further exploitation.

Even after long delays, the United States Attorney has sought to proceed in the least confrontational way to have the involved parties comply with the law. Ms. Akers also sought to proceed in the least punitive manner possible electing to utilize the civil forfeiture process rather than criminal prosecution as a first step. She has proceeded through the courts at every step allowing the parties to assert their interests. She has also sought to conduct the seizure under the process of law to minimize the danger of injury to anyone involved. When a confrontation did develop, she did not force the situation, but withdrew to bring the parties back into the courts.

At every step the United States Attorney has demonstrated ample restraint and understanding while trying to carry out her sworn duty to uphold the law. As to potential damage to the electronic gambling equipment, she has expressed her concern about possible heat damage to the Tribe's lawyers on a number of occasions. She suggested removing the equipment to a more protected situation while matters were resolved in court, but was rebuffed.

In short, it would appear that the resolution of this situation lies in prompt compliance by Arizona and the Indian communities with the law and their obligation to negotiate in good faith. The Justice Department was pleased to learn of the parties entering into serious negotiations.

The United States Attorney has been committed to seeking a just, lawful, and peaceful end to this matter. The Justice Department will do all that it is permitted to do under the law to facilitate this process.

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George J. Terwilliger
Deputy Attorney General

cc: Linda Akers
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District of Arizona

The Honorable Alan Stephens
Senate Majority Leader
Arizona State Senate
Phoenix, Arizona 85007

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Sincerely,

George J. Terwilliger
Deputy Attorney General

cc: Linda Akers
United States Attorney
District of Arizona



U.S. Department of Justice

United States Attorney
District of Arizona

4000 United States Courthouse
Phoenix, Arizona, 85025

602/379-3011

FTS/261-3011

'92 MAY 28 P3:59

May 22, 1992

EXECUTIVE SECRETARIAT

The Honorable William P. Barr
Attorney General
10th & Constitution N.W., RM 5111
Washington, DC 20530

Re: AAIA Letter

Dear Bill:

I am in receipt of a copy of the letter to you from the Association on American Indian Affairs, and wanted you to have my thoughts before you responded.

1. Let me assure you that there was no joint action by the State of Arizona and the U. S. Attorney. (There apparently is sentiment that the U. S. Attorney was doing the bidding of the state to enhance the state's ability to obtain favorable compact provisions.) I made a determination, after months of discussion with tribal leaders and their attorneys, that gambling operations without the necessary compacts should not be allowed to continue. (Please see enclosed letters.) My requests for compliance were ignored, resulting in continued widespread unregulated gambling.

2. The gambling operation on the Ft. McDowell Reservation was extensive, involving a lottery, bingo, Keeno, and 387 video machines. Confidential information from tribal business records, obtained as a result of the execution of the seizure warrant last week, indicates that the Ft. McDowell tribe made over \$26 million from its gaming operation in an eight month period. Of this amount, over \$15 million was derived from the operation of the seized video machines alone. This cash flow was completely unregulated. To make matters worse, as late as 1990 the Ft. McDowell operation was being managed by Bernie Black. Mr. Black has felony convictions for running an illegal casino in Kansas in 1966, and 1970 convictions for theft and possession of stolen property in Minnesota. (See attached news article.) Moreover, the current Vice-Chairman Gilbert Jones, (an outspoken advocate for resistance to our lawful authority) has admitted diverting over \$21,000 in tribal funds to his son's use. He is currently under a pretrial diversion agreement with this office.

3. Mr. Kimble indicates that meetings with the tribe would have accomplished the same result as the seizure. I seriously doubt that would have been the case. I had met with tribal officials on numerous occasions, both individually and collectively, to no avail. Indeed, I had a meeting with the Ft. McDowell tribal lawyers shortly before the seizure. The tribe continued to request additional time to reach an agreement, but took no independent action to comply with the law. Specifically, the tribe had not pursued its legal remedy under IGRA to file suit against the state as had other tribes with gambling interests.

4. Our seizure is untimely only to the extent that Arizona completely repudiated its previously stated position and has, as of May 21, 1992, indicated that it is willing to enter into a tribal/state compact. I cannot believe that the tribes and the state would have reached this agreement without our intervention and thus unregulated gambling would have gone on indefinitely.

5. Our unannounced execution of the seizure warrants was necessary to protect lives and property. I discussed at length my concerns with the FBI and Marshals that issues of sovereignty could cause the type of reaction that occurred. I believe that the emotional response that we saw justifies my refusal to give specific notice.

6. With respect to the storage issue, we have repeatedly insisted that the tribe turn over custody of the machines to the Marshal. Moreover, the issue of damage to the machines was discussed with the tribes' lawyers very shortly after the attempted seizure. The tribe was adamant that they would not release the machines and has twice refused orders of the Court to turn the machines over to the U. S. Marshal. We have continued to seek removal of the machines off the reservation and on May 21, 1992 received an Order to Show Cause why an injunction should not issue requiring the Ft. McDowell tribe to deliver the gambling machines off the reservation and to cease and desist interfering with the removal of said machines. A hearing on the show cause order is set for next Friday, May 29, 1992.

7. I do not know what representations may have been made by the state regarding justification for the seizure of the machines. As aforesaid, the machines were not seized at the behest of the state. They were seized because the gambling devices were being operated without a tribal/state compact (the regulatory mechanism) in violation of law. The problems associated with unregulated gaming are numerous, and include defrauding the tribe as well as the public.

8. The compromise proposed by this office did not include operation of the gambling devices under any circumstances. Indeed, under my proposal, the machines would be stored off the reservation, with right of access by the tribe for maintenance purposes only. The machines would only have been returned to the tribe for operation after an approved compact was in place.

9. I have repeatedly acknowledged the Congressional mandate that gaming on the reservation is legal if conducted pursuant to a tribal/state gaming compact. I therefore do not oppose gambling on the reservation with its attendant economic benefits. I do, however, oppose blatant disregard for the law.

10. Neither the tribes nor the states are above the law. The law applies to both equally. The tribes would like to have continued their operations with impunity despite my repeated requests for compliance with the law. I would sincerely hope that my action to enforce the law would not chill our ongoing relationship. I cannot speak to the tribes' damaged relationship with the state, but I can see how it might be severely damaged under the circumstances. The state repeatedly refused to negotiate a compact in good faith.

11. I take my responsibility to enforce the law, without regard to race, creed, color or national origin, very seriously. The federal law applies to the tribes as well as other citizens. Indeed, under the law I could have initiated criminal prosecutions, but instead took the least punitive action consistent with my duties.

12. I do fear, however, that the federal-tribal relationship may be impacted by the apparent tribal belief that they are sovereign and that the federal government only has such power as the tribes have delegated to it. (See for example, the enclosed Resolution of the Colorado River Indian Tribe.) This misconception may have a more devastating impact upon our relationship than any enforcement action. I am opposed to mob rule and bullying under any circumstances.

I hope this helps you to respond to Mr. Kimble's letter. If I can be of further assistance, please let me know.


Sincerely,

Linda

LINDA A. AKERS
United States Attorney
District of Arizona

LAA/psd
encs.

cc: Jeff Howard
Deputy Attorney General



May 21, 1992

Association on
American Indian Affairs

245 Fifth Avenue
Suite 1801
New York, NY 10016-8728

(212) 689-8720
(212) 685-4692 FAX

Gary Niles Kimble *Gros Ventre*
Executive Director

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Janine Pease-Windy Boy *Crow*
William M. Ray *Klamath*
Henry F. Smeal
Howard B. Teich
Wathene Young
Cherokee/Delaware

The Honorable William P. Barr
U.S. Attorney General
U.S. Department of Justice
10th & Constitution Avenue, N.W.
Washington, D.C.

VIA FACSIMILE
(202) 514-4371

Dear Mr. Attorney General:

I write to you on behalf of the Association on American Indian Affairs, the oldest Indian rights organization in the United States with a membership of approximately 50,000 members.

It is a great concern of the Board of Director and staff of the Association that the recent events in Arizona be subject to close review by your office. In particular, the joint actions of both the State of Arizona and the U.S. Attorney's officer under the auspices of Linda Akers' supervision.

In particular, the untimely seizure of property owned and possessed by the Fort McDowell Indian community is troubling. Surely, the generally business-like attitude of the Arizona tribes and their attitude of jurisdictional cooperation with the State of Arizona in the past did not warrant a "sting-type" of operation. Meetings embracing friendly dialogue with the various tribal leaders would have accomplished the same result.

The seizure and the resulting poor storage will probably damage the machines, resulting in economic devastation for the tribal people in question even if the impasse is resolved in their favor.

In addition, it is clear to the Association that the representations made to the tribes in justification of the seizure do not represent the intent of the State of Arizona in this matter. First, the seizure was made based upon the concerns of the State that "criminal elements" were involving themselves in the tribal operations. Yet, one of the elements offered for a negotiated settlement of the impasse was to allow the tribes to continue with small gaming operations if they rejected larger plans to house their operations in larger facilities such as hotels. This leads us

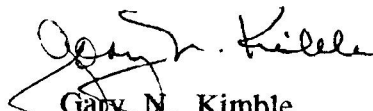
The Honorable William P. Barr
May 21, 1992
Page 2

to conclude that the State of Arizona sees the seizure as a strategy to keep the tribal gaming operations on a small scale. Certainly, this would appear to be an economic development strategy rather than one to stop organized crime from entering the field.

Certainly, tribal/state relations has entered during the last decade into a friendly stage with the advent of the tribal/state cooperative agreements and compacts. The actions of the State of Arizona and the U.S. Attorney's office by this one event, chilled the atmosphere whereby tribes and states can work cooperatively in the fields of gaming, Indian Child Welfare, cross-jurisdictional disputes to name only a few.

I hope your office will review these matters seriously and in particular review the actions of the U.S. Attorney's office which have seriously damaged tribal state relationships in many parts of the country by this one untimely act.

Sincerely,



Gary N. Kimble
Executive Director

c: U.S. Attorney's Office, Phoenix, Arizona
Board of Directors, AAIA
Senator Daniel Inouye
Senate Select Committee on Indian Affairs

GK:s7



U.S. Department of Justice

*United States Attorney
District of Arizona*

4000 United States Courthouse
Phoenix, Arizona, 85025

602/379-3011
FTS/261-3011

November 6, 1991

[TO ALL ARIZONA TRIBAL CHAIRMEN]

Dear

From time to time my Office has received inquiries and complaints regarding gaming activities on the Indian reservations of Arizona. I have been informed that various forms of gaming are being conducted by several Arizona tribes and that other tribes are currently considering the establishment of gaming operations on their reservations. In an effort to promote cooperation, to avoid misunderstanding, and to attempt to achieve uniform compliance, I am writing this letter to inform you of my interest and concern in this matter as well as my decision to begin enforcement of the Indian Gaming Regulatory Act (IGRA).

My predecessor, Stephen M. McNamee, elected to forego prosecutions of gambling activity on the reservations until after the passage of the (IGRA) and the staffing of the National Indian Gaming Commission created by the Act. The Act became law in October, 1988, and though it has taken some time, the Commission is now fully staffed. Regulations have also been drafted and are now being promulgated. As a result, the uncertainties in this area of federal law have been largely eliminated.

As I expect you are aware, the Act permits the operating of Class III gaming activity (essentially all forms of commercial gaming except bingo and card games conducted in compliance with state law) on Indian Reservations as long as it is conducted in accordance with Tribal-State compacts. In the absence of such compacts, activities that might otherwise be authorized by the Act are illegal. This includes electronic or electromechanical facsimiles of any game of chance or slot machines of any kind.

The Act has also made gambling activities in Indian country federal crimes. If the federal gaming laws are not complied with, it is my statutory obligation and duty to investigate and prosecute any violations of these federal criminal laws. In addition, I have the obligation to utilize the Act's forfeiture provisions relating

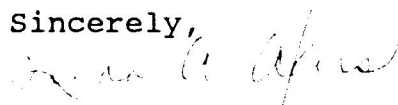
to unlawful gaming operations, if appropriate. Among the federal criminal or forfeiture statutes which could have application in these situations are 18 U.S.C. § 1166, Gambling in Indian Country; 18 U.S.C. § 1955, et seq., the Organized Crime Control Act; 15 U.S.C. § 1175, Unlawful Possession or Use of Gambling Devices in Indian Country.

I would request that you carefully review both the IGRA and these statutes in order to understand the potential consequences of conduct relating to gaming. Beginning January 1, 1992, I will take appropriate action against gaming activity conducted in violation of the IGRA. This will include Class III gaming on Indian reservations which is not conducted under a tribal-state compact (regardless of the current status of negotiations) and is not otherwise in compliance with the IGRA and the rules and regulations adopted by the National Indian Gaming Commission.

It is my sincere hope and expectation that federal prosecutions and/or forfeitures relating to gaming activities in Indian country will not become necessary. I trust that this letter will ensure that there will be no misunderstandings as to the obligation by this Office to enforce federal laws.

Thank you for your cooperation. Should you have any questions, you may feel free to contact my First Assistant, Wallace H. Kleindienst at (602) 379-3911.

Sincerely,


LINDA A. AKERS
United States Attorney
District of Arizona

LAApds

cc: Honorable J. Fife Symington
Governor, State of Arizona

Honorable Grant Woods
Arizona Attorney General

James F. Ahearn
Special Agent in Charge, F.B.I.



U.S. Department of Justice

*United States Attorney
District of Arizona*

*4000 United States Courthouse
Phoenix, Arizona, 85025*

*602/379-3011
FTS/261-3011*

April 7, 1992

[TO ALL ARIZONA TRIBAL CHAIRMEN]

Dear

I am concerned that during an exchange with Senator Domenici and others at the Senate Select Committee's March 18 hearing on Indian gaming, those in attendance and the public may have been confused regarding this office's position on the enforcement of the Indian Gaming Regulatory Act and, more specifically, the Johnson Act (15 U.S.C. § 1171, et. seq.) I want to take this opportunity to clarify my position, at least insofar as it pertains to the District of Arizona.

All members of the Senate Select Committee, as well as myself, have acknowledged the difficulties inherent in the enforcement of the Indian Gaming Regulatory Act at the present time given the pendency of definitional regulations, ongoing compact negotiations, and active litigation between several tribes and various states. These difficulties, however, in no way preclude other appropriate and available remedies. Moreover, in no way did I mean to suggest that the District of Arizona is not fully dedicated, as it is with respect to all laws, to enforcing the statutes as given to us by Congress, including the Indian Gaming Regulatory Act and the Johnson Act, which makes unlawful the transportation, possession, or use of gambling devices in Indian Country.¹

My November 6, 1991, letter gave you notice of this office's intention to take appropriate action under the circumstances of

¹The Indian Gaming Regulatory Act, 25 U.S.C. § 2710(d)(6), suspends application of the Johnson Act in Indian Country only where a valid compact is in effect. Until such compacts are in effect, the provisions of the Johnson Act are fully applicable to gaming activity on Indian Reservations. See 15 U.S.C. §§ 1175-77.

each case. Please do not consider my testimony or the testimony of anyone else in the Department of Justice as an indication of any other intention. I am sorry if anything I said has caused you confusion. I continue to urge you to strictly comply with the law or face enforcement action by this office.

Sincerely,

A handwritten signature in cursive script, appearing to read "Linda A. Akers".

LINDA A. AKERS
United States Attorney
District of Arizona

- 2 -

Raided tribe losing gaming money

Fort McDowell was beginning to realize social-services goals

By Jonathan Sidener
The Arizona Republic

Only a year after profits from its cleaned-up gambling operation began to soar, the Fort McDowell Mohave-Apache Indian Community saw most of its income disappear last week when federal agents impounded 358 video gambling machines.

Before the raid, the gaming hall was grossing \$2 million to \$3 million a month, with about 70 to 80 percent of the take coming from video machines.

Compounding the Indians' disappointment is that only recently had the income begun to flow properly to its intended targets: tribal social programs. Until last year, the hall produced disappointing revenues, a situation that made some tribal members suspect substantial amounts of cash were being skimmed.

When the tribe extricated itself from a contract with Kansas City, Mo.-based Mid-America Trust Inc., gross revenues immediately rose by more than \$1 million a month.

"We weren't (netting) very much, about \$200,000 to \$250,000 a month," tribal Vice President Gilbert Jones said. "When we took over, it went up to over \$500,000 a month."

The 5½ years of gaming operation under Mid-America Trust were plagued with problems, Fort McDowell tribal leaders say.

But there was never any proof of theft.

Money skimming suspected

"There were a number of people who suspected that money was being skimmed," Jones said. "There were things that reaffirmed that belief. But there was never anything that we could prove."

There's no question what happened to the money this time. Because the tribe has been unable to reach an agreement with the state to allow casino-style gambling, federal law authorizes confiscation of the lucrative video machines.

Acting on orders from U.S. Attorney Linda Akers, FBI agents hit five Arizona Indian reservations Tuesday, seizing about 750 video gambling machines.

After Gov. Fife Symington arranged a 10-day cooling-off period, Akers proposed returning the machines to four of the five tribes for storage or sale, but not for gambling purposes. The proposal was based on tribes "cooperating" during the raids.

Because Indians at Fort McDowell responded with an impromptu blockade, setting off the only confrontation in the state over the raids, that reservation is excluded from the deal,

Akers said.

Still, the proposal has met a lukewarm reception. None of the tribes has formally accepted the deal.

The federal intervention came just as the Fort McDowell tribe was beginning to reap the benefits of cleaning up its gambling operation.

Pitfalls of Indian gambling

Fort McDowell's early woes are hardly unique, experts say. Pitfalls abound when tribes start gambling operations, whether from mismanagement or outright fraud, according to James Trant, a Scottsdale resident and gambling consultant to Fort McDowell and tribes in several other states.

In 1984, Fort McDowell joined a growing list of tribes across the country that established gambling operations to fund housing, education, recreation and other social programs.

Like many others, Fort McDowell turned to the gambling industry to find experts to run its operations. And as with other tribes, Fort McDowell leaders had an uneasy sense they were being shorted.

But there was no proof and little hope of recourse, given state and federal opposition to Indian gaming.

"It would be kind of like a prostitute going to the police and telling them her pimp beat her," Trant said. "Who are they going to complain to?"

Fort McDowell contracted with Mid-America to run the operation in exchange for 38 percent of the profits.

Who was running things?

Howard Murray, a former Kansas City resident and air-traffic controller, ran the operation for Mid-America. But law-enforcement sources say the reservation gambling really was run by Bernie Black, another former Kansas City resident who worked with Murray as an air-traffic controller.

Black was frequently in the bingo-hall offices conducting business, Jones and Tribal President Clinton Pattea said.

"He was in the hall all the time, running things," Pattea said. "We never had any contract with him. We asked who he was. We asked for a background check on him. That's when he stopped coming around."

But Murray denies that Black had any role in the operation.

"He's an old friend," Murray said Friday. "Maybe he stopped by, but he never had anything to do with the business."

Friend's felony convictions

Black has a pair of felony convictions, which would disqualify him



Benjamin Anton (foreground) and his mother, Denise Alley, listen as a powwow circle near the gaming center at the Fort McDowell Mohave-Apache Indian Community is blessed at the start of a 10-day powwow last week.

under federal law from running an Indian gambling operation. He pleaded guilty to running an illegal casino in Leavenworth, Kan., in 1966, and in 1970 was convicted of theft and possession of stolen property in Minnesota.

Once the hall opened, money began to trickle down to the tribe. But tribal leaders were frustrated with the amount and with their lack of control over the operations.

After 5½ years, the tribe exercised its option to end its contract with Mid-America, paying the firm \$300,000.

One of the biggest differences between the years when Mid-America ran the gambling operations and the years of tribal management can be seen in the Fort McDowell community library.

In 1990, the last full year that Mid-America ran the operations, the tribe didn't even have a budget category for a library.

In 1992, the first full year of tribal management, the tribe budgeted \$87,787 of its gambling profits toward the library, based on pre-raid income levels.

'Adding a museum area'

"We're already contemplating an addition to the library. We're thinking of adding a museum area," said Pattea, who believes the tribe eventually will retain use of its machines.

Not far from the library, a baseball field has a new chain-link fence, new paint on the clubhouse and freshly planted grass. In 1992, gaming revenues provided \$204,019 for tribal recreation programs.

In 1990, that number was only \$59,950.

"We're hoping to get lights so the kids can play at night during the summer when it's not so hot," Pattea said.

In 1990, gambling revenues provided \$80,000 for preschool and tutoring programs; under tribal management, that jumped to \$227,000.

Those figures reinforce tribal suspicions of theft. Pattea and Jones said that audits during the Mid-America years revealed security problems that would have let skimming go undetected.

Murray, however, says the auditors never found problems.

No 'checks and balances'

As the tribal leaders describe it, there was little control over the money taken in at the cash registers; little control over the cash between the registers and the counting room; and no tribal members were present in the counting room.

"There weren't any checks and balances," Jones said.

Cashiers entered bingo-hall sales into individual computerized registers. But there was no central accounting

system, Pattea said.

"Our internal controls over the money were very lax," he said. "All the sales were entered into the cashier's computers. Those computers were not hooked into a central computer. It was worthless. It was just like a toy adding machine."

The laxity continued en route from the cashier window to the counting room, Pattea said. A supervisor collected the cash drawers and delivered them to the counting room. But the cashier never counted the money before it was collected, Pattea said.

So an uncounted amount of money was delivered to a counting room, where it was counted for the first time out of sight of any tribal members, he said.

Murray maintains tribal members were present for the money counting.

After audits, tribal officials directed Mid-America to fix the problem. But nothing changed, Pattea said. Eventually, the tribe gave up on Mid-America, took control of its own operation and saw a dramatic increase in revenue.

Now, the main source of that revenue sits idle in trailers on the reservation.

Resolution No. 77-92**RESOLUTION****COLORADO RIVER TRIBAL COUNCIL**

A Resolution to ~~Support the Indian Nations Within Arizona in their Struggle to Preserve and Enhance their Sovereign Rights as Indian People~~
Be it resolved by the Tribal Council of the Colorado River Indian Tribes, in ^{Special} regular meeting assembled
May 19, 1992
on _____

- WHEREAS, Indian people have the same inherent, inalienable, natural rights to self-government as have all other peoples; and
- WHEREAS, in the exercise of these natural rights Indian people have instituted governments in order to promote their general welfare; and
- WHEREAS, Indian tribal governments are the legitimate governing authorities within retained tribal territories; and
- WHEREAS, the federal government is a government of only limited and delegated powers; and
- WHEREAS, any claim or exercise by the federal government of authority over Indian people in excess of those powers delegated to the United States by Indian people is illegitimate and contrary to the inherent rights of self-government granted to all peoples by our common Creator; and
- WHEREAS, the inherent rights to self-government of Indian people are protected by the Ninth and Tenth Amendments to the United States Constitution; and
- WHEREAS, Indian people have never delegated any of their sovereign powers to the State of Arizona, and the State of Arizona has no legitimate claim to exercise governmental authority over Indian peoples within their retained tribal territories; and

The foregoing resolution was on May 19, 1992 duly approved by a vote of
6 for, 0 against and 0 abstaining, by the
Tribal Council of the Colorado River Indian Tribes, pursuant to authority vested in it by Section
1. VI
Article of the Constitution and By laws of the Tribes,
ratified by the Tribes on March 1, 1975 and approved by the Secretary of the Interior on May 29, 1975,
pursuant to Section 16 of the Act of June 18, 1934, (48 Stat. 984). This resolution is effective as of the
date of its adoption.

COLORADO RIVER TRIBAL COUNCIL

By

ACTING

Chairman

Secretary

RESOLUTION NO. R-77-92

MAY 19, 1992

PAGE 2

WHEREAS, the inherent sovereign rights of many of our sister tribes within Arizona have recently been threatened by the illegitimate enforcement actions by the United States Attorney for the District of Arizona and other federal officials, including confiscation of tribally-owned and operated gaming machines from within tribal territories; and

WHEREAS, such actions have been taken based upon claims that such gaming machines are unlawful in the absence of gaming compacts between Indian nations and the State of Arizona pursuant to the Indian Gaming Regulatory Act; and

WHEREAS, the said enforcement actions by federal officials are discriminatory and constitute selective enforcement; and

WHEREAS, the United States Attorney for the District of Arizona completely fails to provide adequate prosecution of crimes by non-Indian people against Indian people within tribal territories, over which the United States exercises exclusive jurisdiction; and

WHEREAS, notwithstanding the public claims of the State of Arizona, the State of Arizona has failed and refused for years to negotiate gaming compacts in good faith with Indian nations, in violation of the Indian Gaming Regulatory Act; and

WHEREAS, the State of Arizona continues to operate so-called Class III gaming within tribal territories, in that it operates the Arizona State lottery within tribal territories, in violation of the Indian Gaming Regulatory Act; and

WHEREAS, revenues generated by Indian gaming are essential to fund needed governmental services to Indian people within tribal territories; and

WHEREAS, the state governments, indirectly through their Congressional representatives and through federal enforcement officials, have denied to Indian people the same basic rights as are exercised by peoples elsewhere in the United States to support needed public services by raising revenues through gaming; and

WHEREAS, Indian people will never cease their common struggle for freedom in this land of their birth;

NOW, THEREFORE, BE IT RESOLVED by the Tribal Council of the Colorado River Indian Tribes, that the Tribes support all other Indian nations within Arizona in their struggle to preserve and protect the sovereign rights of Indian people; and

BE IT FURTHER RESOLVED that the Tribes specifically support the position of the Indian nations within Arizona who are engaged in gaming activities to conduct those activities free of discriminatory and illegitimate interference by the State of Arizona and the United States Attorney for the District of Arizona and other federal officials; and

RESOLUTION NO. R-77-92
MAY 19, 1992
PAGE 3

BE IT FURTHER RESOLVED that the Tribes call upon the Honorable Fife Symington, Governor of the State of Arizona, to engage in good faith negotiations with the Indian nations to conclude gaming compacts under the Indian Gaming Regulatory Act on terms acceptable to the Indian nations; and

BE IT FURTHER RESOLVED that the Tribes call upon the United States Attorney for the District of Arizona and other federal officials to cease their discriminatory and illegitimate enforcement actions against Indian nations within Arizona engaged in gaming, and to return all machines and other tribal properties confiscated from the Indian nations to their rightful owners, the Indian nations, and restore said machines and other tribal properties to their original conditions; and

BE IT FURTHER RESOLVED that the Tribes call upon the United States Congress to amend the Indian Gaming Regulatory Act, on terms acceptable to Indian nations, and to reflect the inherent rights of Indian people to engage in gaming on the same basis as other peoples within the United States; and

BE IT FURTHER RESOLVED that copies of this resolution be forwarded to representatives of the other Indian nations within Arizona, to the Governor and Attorney General of the State of Arizona, to the United States Attorney for the District of Arizona, to the members of the Arizona Congressional Delegation, to the members of the United States Senate Select Committee for Indian Affairs, and to other interested persons; and

BE IT FURTHER AND FINALLY RESOLVED that the Chairman and Secretary of the Tribal Council, or their designated representatives, are hereby authorized to execute any and all documents necessary to implement this resolution.

DEPARTMENT OF JUSTICE
EXECUTIVE SECRETARIAT CONTROL DATA SHEET

From: INOUE, SENATOR DANIEL K. CHMN, SELECT COMTE/INDIAN AFFAIRS
To: AG. ODD: 06-26-92
Date Received: 06-12-92 Date Due: 09-01-92 Control #: X920612090809
Subject & Date

05-22-92 LETTER (RECEIVED IN EXEC SEC ON 06-12-92) FROM THE
CHAIRMAN, SELECT COMMITTEE ON INDIAN AFFAIRS, ON BEHALF OF
SAMUEL PENNEY, CHAIRMAN OF THE NEZ PERCE TRIBAL EXECUTIVE
COMMITTEE, REGARDING THE DECISION OF THE DEPARTMENT NOT TO
REPLACE THE POSITION IN THE PORTLAND, OR, OFFICE THAT WAS
VACATED BY THE RETIREMENT OF GEORGE DYSART IN 1991. THE
CHAIRMAN WOULD LIKE TO BE ADVISED OF THE DEPARTMENT'S SHORT
AND LONG RANGE PLANS FOR THIS VACANCY AND OF THE ACTUAL **

	Referred To:	Date:	Referred To:	Date:	
(1)	OLA;RAWLS	07-27-92	(5)		W/IN:
(2)	ENR;O'MEARA	08-18-92	(6)		PRTY:
(3)	OLA;RAWLS	08-25-92	(7)		1
(4)			(8)		OPR:
	INTERIM BY:		DATE:		MLH
	Sig. For: OLA		Date Released: 09-01-92		

Remarks

(1) REVISED LETTER SUBMITTED FOR OLA SIGNATURE. BJ
(2) RETURNED FOR ADDITIONAL REVISIONS. RETURN TO E.S.
EXEC SEC FOR TRANSMITTAL TO OLA. (MLH)
(3) ENR REVISED LETTER FOR SIGNATURE. YEW
09-01-92: AAG RAWLS SIGNED LETTER WHICH WAS DATED 09-01-92
IN EXEC. SEC. AND HAND DELIVERED VIA OLA MESSENGER ON
09-01-92. COPIES TO ENR, AG FILES, LEGISLATIVE FILES. YEW

Other Remarks:

OLA CONTACT: JOE DeSANCTIS (514-2111)

FILE: INDIAN AFFAIRS

REMOVE THIS CONTROL SHEET PRIOR TO FILING AND DISPOSE OF APPROPRIATELY

DEPARTMENT OF JUSTICE
EXECUTIVE SECRETARIAT CONTROL DATA SHEET

From: INOUE, SENATOR DANIEL K. CHMN, SELECT COMTE/INDIAN AFFAIRS
To: AG. ODD: 06-26-92
Date Received: 06-12-92 Date Due: 07-29-92 Control #: X92061209080
Subject & Date

05-22-92 LETTER (RECEIVED IN EXEC SEC ON 06-12-92) FROM THE
CHAIRMAN, SELECT COMMITTEE ON INDIAN AFFAIRS, ON BEHALF OF
SAMUEL PENNEY, CHAIRMAN OF THE NEZ PERCE TRIBAL EXECUTIVE
COMMITTEE, REGARDING THE DECISION OF THE DEPARTMENT NOT TO
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CHAIRMAN WOULD LIKE TO BE ADVISED OF THE DEPARTMENT'S SHORT
AND LONG RANGE PLANS FOR THIS VACANCY AND OF THE ACTUAL **

Referred To:	Date:	Referred To:	Date:	
(1) ENR;CLEGG	06-12-92	(5)		W/IN:
(2) OLA;RAWLS	07-14-92	(6)		
(3) ENR;CLEGG	07-23-92	(7)		PRTY:
(4)		(8) OLA;RAWLS	07-27-92	1
INTERIM BY:		DATE:		OPR:
Sig. For: OLA		Date Released: SEE "9"		MLH

Remarks

** COSTS INVOLVED IN RETAINING A POSITION TO ADDRESS THE
LITIGATION NEEDS OF THE TRIBES IN THE PACIFIC NORTHWEST.
SEE E.S. 92021802686 - COPY OF CONTROL SHEET ATTACHED.
EXEC SEC SENT COPIES TO OAG, OAG (STEVENS), DAG, ASG,
OLA (DeSANCTIS). ORIGINAL TO AG FILES.
(1) PREPARE RESPONSE FOR AAG/OLA SIGNATURE AND RETURN TO
EXEC. SEC., ROOM 4400-AA, WITH COPY OF INCOMING

Other Remarks:

CORRESPONDENCE, FOR TRANSMITTAL TO OLA.
(2) ENR LETTER FOR SIGNATURE. YEW
(3) RETURNED FOR REVISIONS. SEE OLA NOTE. RETURN
THRU EXEC SEC. (MLH)

OLA CONTACT: JOE DeSANCTIS (514-2113)
JRH 6/12/92
FILE: INDIAN AFFAIRS

REMOVE THIS CONTROL SHEET PRIOR TO FILING AND DISPOSE OF APPROPRIATELY



U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

SEP 1 1992

Honorable Daniel K. Inouye
Chairman, Select Committee on Indian Affairs
United States Senate
Washington, D.C. 20510-6450

Dear Mr. Chairman:

This letter is in response to your recent letter concerning the replacement for George Dysart, a Justice Department attorney stationed in Portland, Oregon, who retired last year. You asked to be advised of the Justice Department plans for this position and the actual costs involved in retaining an attorney to meet the litigation needs of Indian tribes in the Pacific Northwest.

The position has been filled by the transfer of a senior attorney, Peter Monson, from the Indian Resources Section in Washington. He is well known to many of the Northwest tribes as a result of his extensive experience in Indian litigation being conducted in the region. He is based in Denver, Colorado, and assumed his new duties on July 13, 1992.

Some of the Northwest tribes have expressed concern that this position is not being retained in Portland and that somehow Justice's commitment to litigation issues in the region is thereby diminished. Mr. Dysart was a Special Assistant United States Attorney and not an employee of the Environment and Natural Resources Division. When he retired we decided that his case load and the interests of Northwest tribes involved in litigation mandated that an experienced attorney be assigned in the field as a replacement. Consequently, an attorney from within the Indian Resources Section was selected, thereby putting additional stress on our limited budget. But, as a result of transferring an existing position from Washington to Denver, no additional financial burden has been incurred other than that associated with the costs of moving.

Because it would have been costly to place a solitary attorney and support in Portland, we decided to station Mr. Monson in Denver where there is an existing Division office that can be utilized. He will be assigned some work on cases outside the Pacific Northwest, but several other attorneys in Washington will continue their assignments to fishing rights cases and other matters of interest to the region. With one attorney assigned who has quick access to the Northwest and others available in

Washington, we will be able to meet the responsibilities of the United States in this area.

I trust that I have been able to reassure you and the Committee that our commitment to litigation of concern to Indian tribes in the Pacific Northwest is every bit as substantial as it was before George Dysart retired. If you desire any additional information on this matter, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "W. Lee Rawls", with a stylized flourish at the end.

W. Lee Rawls
Assistant Attorney General

DANIEL K. INOUE, HAWAII, CHAIRMAN
JOHN MCCAIN, ARIZONA, VICE CHAIRMAN

DENNIS DECONCINI, ARIZONA
QUENTIN N. BURDICK, NORTH DAKOTA
THOMAS A. DASCHLE, SOUTH DAKOTA
KENT CONRAD, NORTH DAKOTA
HARRY REID, NEVADA
PAUL SIMON, ILLINOIS
DANIEL K. AKAKA, HAWAII
PAUL WELLSTONE, MINNESOTA

FRANK H. MURKOWSKI, ALASKA
THAD COCHRAN, MISSISSIPPI
SLADE GORTON, WASHINGTON
PETE V. DOMENICI, NEW MEXICO
NANCY LONDON KASSEBAUM, KANSAS
DON NICKLES, OKLAHOMA

PATRICIA M. ZELL,
STAFF DIRECTOR/CHIEF COUNSEL
DANIEL N. LEWIS, MINORITY STAFF DIRECTOR

United States Senate

SELECT COMMITTEE ON INDIAN AFFAIRS

WASHINGTON, DC 20510-6450

May 22, 1992

RECEIVED
DEPT. OF JUSTICE

'92 JUN 12 P12:04

EXECUTIVE SECRETARIAT

The Honorable William P. Barr
Attorney General of the United States
Department of Justice
10th and Constitution Ave., N.W.
Washington, D.C. 20530

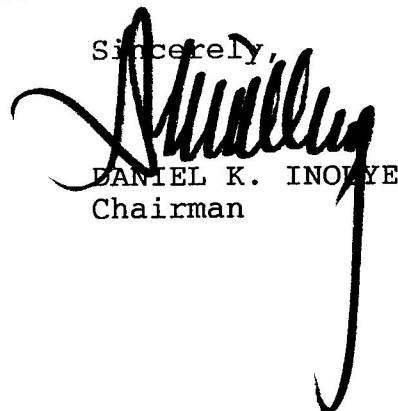
Dear Mr. Attorney General:

Enclosed is a letter from Samuel Penney, Chairman of the Nez Perce Tribal Executive Committee, regarding the decision of the Department of Justice not to replace the position in the Portland, Oregon, office that was vacated by George Dysart upon his retirement last year.

I am advised that this office is critical to the interests of the tribal governments in the northwest, because significant hunting, fishing, timber and other treaty rights and trust resources are either challenged or the subject of litigation. Many tribes believe that allowing this position to remain vacant would mean a severe diminishment of the government's trust responsibility. I would appreciate being advised of the Department's short and long range plans for this vacancy and of the actual costs involved in retaining a position to address the litigation needs of the tribes in the Pacific northwest.

Thank you for your attention and assistance in this matter.

Sincerely,



DANIEL K. INOUE
Chairman

Enclosure



Nez Perce

TRIBAL EXECUTIVE COMMITTEE

P.O. BOX 305 • LAPWAI, IDAHO 83540 • (208) 843-2253

May 7, 1992

Senator Daniel Inouye
United States Senate
722 Hart Senate Office Building
Washington, D.C. 20510-1102

Re: Additional funding needs of the Indian Resources Section,
United States Department of Justice

Dear Senator Inouye:

About nine months ago, Mr. George Dysart, the U.S. Department of Justice attorney who had ably represented the interests of the Columbia River tribes in United States v. Oregon for over twenty years, retired from his position in Portland, Oregon. Since then, the Department of Justice has determined that it has inadequate resources in the Indian Resources Section to replace Mr. Dysart with an attorney in Portland. The litigation involving Indian resources in the Pacific Northwest currently includes: U.S. v. Oregon, U.S. v. Washington, the Snake River Basin Adjudication in Idaho, the adjudication of the Klamath Basin in Oregon. These cases alone are certainly more than any single attorney could handle. In addition, the Department of Justice currently has pending requests for representation of tribes in several other major cases.

We wrote to Mr. Barry Hartman, Acting Assistant Attorney General in February to encourage the Department to re-establish the position in Portland. We received a letter from Mr. Hartman recently indicating that the decision had been made to move an additional Indian Resources attorney to the Denver office, but not to re-establish the Indian Resources office in Portland, because of inadequate resources. Please understand that we are pleased the specific attorney involved will remain on the Snake River adjudication -- the case in which the water rights of the Nez Perce Tribe will be determined for all time. Nevertheless, we feel strongly that for the northwest fishing litigation, and for U.S. v. Oregon in particular, the Department of Justice Indian Resources Section needs a presence in the Pacific Northwest.

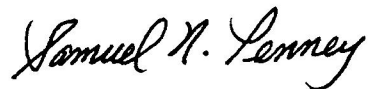
We understand the Department has limited resources, as we all do. However, the Department's obligation to protect and defend Indian resources and treaty rights does not diminish simply because

of tight budgets. We ask for your assistance in obtaining additional funding for the Indian Resources Section, in amounts sufficient to allow the re-establishment of an Indian Resources office in Portland, as well as to reduce the delays in the Section's processing of requests for representation. In the northwest alone, we are aware of requests which have been pending for several months, and in one case, for more than a year. As you know, these are requests made by the Department of the Interior after the Solicitor's office has prepared a litigation report and determined that the case has sufficient merit to seek Department of Justice action. We have no way to determine how many, if any, cases may have been rejected for lack of resources.

The U.S. Supreme Court's decision in the Noatak case, (holding that the state's 11th amendment immunity from damages is not waived by the statute giving federal courts jurisdiction over claims by tribes) will make direct claims for damages against states by tribes more difficult, if not impossible. As a result, it is reasonable to expect that requests for United States' representation of tribes in litigation against states will increase. We believe the Section's current caseload precludes it from issuing prompt decisions on requests for representation, and we believe after Noatak the situation will only deteriorate.

We hope that you will be able to assist tribes in this matter by providing the Section with additional resources with which to represent our interests. Please contact me if we can provide you with any additional information. I enclose our previous correspondence with Mr. Hartman for your review.

Sincerely,



Samuel N. Penney
Chairman

cc: NPTEC
Mr. Barry Hartman, Esq.

encl:

DEPARTMENT OF JUSTICE
EXECUTIVE SECRETARIAT CONTROL DATA SHEET

From: LUJAN, MANUEL, JR., SECRETARY, DEPARTMENT OF THE INTERIOR
To: BRYAN, SENATOR RICHARD (CC: AG.) ODD: NONE
Date Received: 05-26-92 Date Due: NONE Control #: X92052708117
Subject & Date

05-19-92 LETTER (COPY) THANKING SENATOR BRYAN FOR
CORRESPONDENCE, CO-SIGNED BY THE OTHER THREE MEMBERS OF
NEVADA'S CONGRESSIONAL DELEGATION, CONVEYING HIS CONCERNS
REGARDING INDIAN GAMING. MR. LUJAN ADVISES THAT HE HAS
RECENTLY ANNOUNCED A NEW EFFORT TO IMPROVE THE MANNER IN
WHICH THE DEPARTMENT WILL REGULATE INDIAN GAMING UNDER THE
AUTHORITY OF 25 U.S.C. SEC. 81. ENCLOSURES A COPY OF A MEMO
ON IMPLEMENTING INTERIOR'S MANAGEMENT STRATEGY TO **

Referred To:	Date:	Referred To:	Date:	
(1) OAG;	05-27-92	(5)		W/IN:
(2)		(6)		
(3)		(7)		PRTY:
(4)		(8)		1
INTERIM BY:		DATE:		OPR:
Sig. For: NONE		Date Released:		EHZ

Remarks

** REGULATE INDIAN GAMING.
(SEE EXEC. SEC. 92040205299 CONTROL SHEET ATTACHED.)

INFO CC: CRM, OLA, EOA.
(1) FOR INFORMATION.

Other Remarks:

OLA CONTACT:

FILE: INDIAN AFFAIRS

CROSS REFERENCES:

1. GAMBLING

REMOVE THIS CONTROL SHEET PRIOR TO FILING AND DISPOSE OF APPROPRIATELY

19 May 92



THE SECRETARY OF THE INTERIOR
WASHINGTON

May 19, 1992

RECEIVED
DEPT. OF THE INTERIOR

'92 MAY 26 P3:44

EXECUTIVE SECRET

Honorable Richard H. Bryan
United States Senate
Washington, D.C. 20510-2804

Dear Senator Bryan:

Thank you for your letter of March 31, 1992, co-signed by the other three Members of Nevada's Congressional delegation, conveying your concerns regarding Indian gaming.

I agree that the very nature of gambling requires that it has to be regulated effectively to avoid the potential law enforcement problems which have historically plagued the gambling industry.

Over the past several months, the Department of the Interior (Department) has become keenly aware of certain problems existing in gaming operations. In response, I recently announced a new effort to improve the manner by which the Department will regulate Indian gaming under the authority of 25 U.S.C. §81.

I asked the Assistant Secretary - Indian Affairs to review the issues you have raised and provide me further information on implementing the Department's management strategy to regulate Indian gaming. Enclosed is a copy of his response.

If I can provide additional assistance, please let me know. Similar letters are being sent to Senator Reid, Congressman Bilbray, and Congresswoman Vucanovich.

Sincerely,

Enclosure

cc: Senator Daniel K. Inouye
Senator John McCain
Congressman George Miller

Congressman Don Young
Attorney General William P. Barr
Secretary of Treasury Nicholas L. Brady



United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240



MAY 05 1992

Memorandum

To: Secretary

From: Assistant Secretary - Indian Affairs
James L. Brower

Subject: Indian Gaming Regulatory Act

This memorandum is in response to the March 31, 1992, letter from Senator Richard Bryan, Senator Harry Reid, Congressman James H. Bilbray and Congressman Barbara Vucanovich regarding the Indian Gaming Regulatory Act. The following information is provided:

We agree that Section 20 of the Indian Gaming Regulatory Act (IGRA) of 1988 requires the concurrence of the Governor of a state when the land sought to be placed in trust status is acquired for gaming purposes. On July 19, 1990, the Department issued a policy for placing lands in trust status which requires, in addition to compliance with existing regulations found in 25 CFR Part 151, compliance with the IGRA.

In 1987, the U.S. Supreme Court held that the State of California could not prosecute Indian tribes for operating high stakes bingo and draw poker which were illegal under state law because California permitted "a substantial amount of gambling, including bingo." The Court went on to say that California actually promoted gambling through its state lottery and concluded that the state regulated, rather than prohibited gambling, in general, and bingo in particular. California v. Cabazon Band of Mission Indians, 480 U.S. 208 (1987). In an attempt to balance tribal, state and Federal interest, Congress enacted the Indian Gaming Regulatory Act, 25 U.S.C. 2701 *et. seq.* in 1988, which embodied the fundamental holdings of the Cabazon decision. In striking this balance, Congress recognized the interest of the states to enforce their gaming laws on Indian lands, and particularly to prohibit gaming that would otherwise be illegal, if performed elsewhere in the state. The IGRA established the framework within which this interest would be addressed and protected. The negotiation process whereby the states and the tribes meet as equals, government-to-government, to negotiate an agreement for a mutually acceptable method of authorizing and regulating high-stakes gaming on Indian lands, is, in our opinion, in accord with the original intent of the IGRA.

We do not believe it is appropriate for the Department to establish a policy on what types of games should be permitted because such a policy would frustrate the established

framework of the IGRA and Congress' balancing of competing interests involved in gaming.

Moreover, the role of the Department in enforcing the IGRA as it relates to tribal-state compacts is limited by the IGRA itself. The Secretary's authority is limited to review and approval of negotiated compacts, and may disapprove a compact if it violates the IGRA, any other Federal law, or the trust obligation of the United States to Indians. To this extent, we believe that the compacting process, as authorized by the IGRA, places the responsibility for enforcement on the states and the tribes as sovereign governments by allowing them to negotiate together to establish the regulatory framework for Class III gaming. Indeed, the compacts approved to date illustrate this point by the specific provisions relating to the regulation of the gaming activity.

With respect to the concern regarding compliance with Department of the Treasury (Treasury) regulations, we believe the Treasury and the Internal Revenue Service (IRS) are monitoring Indian gaming operations to insure compliance with applicable laws and regulations. We have, however, made contact with the Treasury and the IRS to insure continuing coordination and effective regulation. In addition, the BIA has issued a directive to the Area Directors, along with copies of the applicable IRS regulations, directing them to notify tribes of the requirements and the consequences for noncompliance.

The authority to collect fee assessments from gaming tribes is placed with the National Indian Gaming Commission (NIGC). The NIGC has promulgated regulations to govern fee assessments, and, we believe has been collecting such assessments. We are aware that a number of tribes are not paying fees as required by the IGRA. Enforcement of the fee assessment regulations is also the responsibility of the NIGC. However, until the regulations for enforcement and compliance are published as final rules, the NIGC is without a mechanism to enforce its fee assessment regulations. The NIGC expects to publish the enforcement and compliance regulations as a proposed rule within the next few weeks.

Pending the transfer of the bulk of gaming functions to the NIGC, the Department will continue to regulate Indian gaming under the authority of 25 U.S.C. § 81. In this regard, the Department will require strict compliance with the revised administrative guidelines issued on March 5, 1992, by this office. Cease and desist orders will be issued to all tribes and contractors operating gaming without approved management contracts as required by the Administrative guidelines. As of this date, four cease and desist letters have been issued to tribes in the Anadarko and Muskogee Areas in Oklahoma.

To the extent that NIGC regulations have been finalized and in effect, the Department will support and strongly recommend to the Department of Justice their enforcement in appropriate cases.

For the present, however, the Department cannot support the call for a moratorium on approval of tribal-state compacts. Given that compacts are negotiated between a state and a tribe on a government-to-government basis, we are reluctant to interfere with the rights of the respective parties to enter into mutually agreed upon compacts to authorize and regulate gaming as sovereign governments.

While there may be some skepticism with the Department's initial efforts to regulate Indian gaming, we believe our management strategy has a good chance of fostering legal gaming operations. With congressional support, the BIA intends to establish a permanent staff capability to handle gaming functions retained by the Secretary over the long term.

We also know that the tribes themselves recognize the need for effective regulation and enforcement efforts. In the past few weeks many tribes and prospective contractors have informed us they recognize the Department needs to regulate in the interim and they will work with us. As such, we have every reason to believe that tribes will support and assist in this effort.

DOJ EXECUTIVE SECRETARIAT CROSS-REFERENCE RECORD



CONTROL NUMBER: 92052007890

FISHER, H. RICHMOND

THE ENTIRE DOCUMENT PACKET FOR THE CONTROLLED
CORRESPONDENCE INDICATED BY THE ABOVE EX.SEC.
CONTROL NUMBER HAS BEEN FILED IN THE FOLLOWING
PRIMARY FILE LOCATION WITHIN THE SUBJECT FILES
OF THE ATTORNEY GENERAL.

PRIMARY FILE: AG MEETINGS/REQUESTS-CITIZENS

18 MAY 1992

INDIAN AFFAIRS

18 MAY 1992

DOJ EXECUTIVE SECRETARIAT CROSS-REFERENCE RECORD



CONTROL NUMBER: 92051407513

MCWHORTER, LAURNECE S, Dir-EOA

THE ENTIRE DOCUMENT PACKET FOR THE CONTROLLED
CORRESPONDENCE INDICATED BY THE ABOVE EX.SEC.
CONTROL NUMBER HAS BEEN FILED IN THE FOLLOWING
PRIMARY FILE LOCATION WITHIN THE SUBJECT FILES
OF THE ATTORNEY GENERAL.

PRIMARY FILE: REPORTS/DOJ URGENT-SENSITIVE

13 MAY 1992

DOJ EXECUTIVE SECRETARIAT CROSS-REFERENCE RECORD



CONTROL NUMBER: 92051207328

MCWHORTER, LAURENCE S, Dir-EOA

THE ENTIRE DOCUMENT PACKET FOR THE CONTROLLED
CORRESPONDENCE INDICATED BY THE ABOVE EX.SEC.
CONTROL NUMBER HAS BEEN FILED IN THE FOLLOWING
PRIMARY FILE LOCATION WITHIN THE SUBJECT FILES
OF THE ATTORNEY GENERAL.

PRIMARY FILE: REPORTS/DOJ URGENT-SENSITIVE

11 MAY 1992

INDIAN AFFAIRS

11 MAY 1992

DOJ EXECUTIVE SECRETARIAT CROSS-REFERENCE RECORD



CONTROL NUMBER: 92050807262

AKERS, LINDA A

THE ENTIRE DOCUMENT PACKET FOR THE CONTROLLED
CORRESPONDENCE INDICATED BY THE ABOVE EX.SEC.
CONTROL NUMBER HAS BEEN FILED IN THE FOLLOWING
PRIMARY FILE LOCATION WITHIN THE SUBJECT FILES
OF THE ATTORNEY GENERAL.

PRIMARY FILE: REPORTS/DOJ URGENT-SENSITIVE

7 MAY 1992

DOJ EXECUTIVE SECRETARIAT CROSS-REFERENCE RECORD



CONTROL NUMBER: 92050707166

MCWHORTER, LAURENCE S, Dir-EOA

THE ENTIRE DOCUMENT PACKET FOR THE CONTROLLED
CORRESPONDENCE INDICATED BY THE ABOVE EX.SEC.
CONTROL NUMBER HAS BEEN FILED IN THE FOLLOWING
PRIMARY FILE LOCATION WITHIN THE SUBJECT FILES
OF THE ATTORNEY GENERAL.

PRIMARY FILE: REPORTS/DOJ URGENT-SENSITIVE

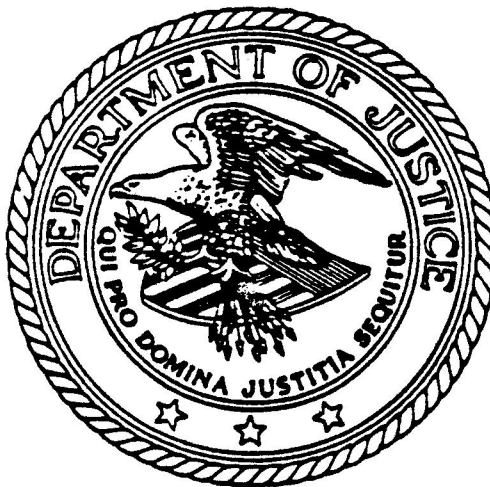
7 MAY 1992

Screened by NARA (RD-F) 02-07-2019
FOIA # 60048 (URTS 16457) DOCID:
70106676

1992

INDICMENTS

DOJ EXECUTIVE SECRETARIAT CROSS-REFERENCE RECORD



CONTROL NUMBER: 92111716656

MOSCATO, ANTHONY C, Acting Director-EOA

THE ENTIRE DOCUMENT PACKET FOR THE CONTROLLED
CORRESPONDENCE INDICATED BY THE ABOVE EX.SEC.
CONTROL NUMBER HAS BEEN FILED IN THE FOLLOWING
PRIMARY FILE LOCATION WITHIN THE SUBJECT FILES
OF THE ATTORNEY GENERAL.

PRIMARY FILE: REPORTS/DOJ Urgent-Sensitive

16 November 1992

DEPARTMENT OF JUSTICE
EXECUTIVE SECRETARIAT CONTROL DATA SHEET

From: MUELLER, ROBERT S., III, AAG, CRM

To: AG.

ODD: 10-15-92

Date Received: 10-15-92 Date Due: 10-16-92 Control #: X92101515049
Subject & Date

10-14-92 MEMO REQUESTING THAT THE AG EXERCISE HIS STATUTORY
AUTHORITY UNDER 18 U.S.C. SECTION 2331(e) BY CERTIFYING
THAT, IN HIS OPINION, THE JUNE 10, 1992, ATTACK ON A U.S.
MILITARY VEHICLE IN PANAMA BY SEVERAL PANAMANIAN NATIONALS,
WHICH RESULTED IN THE DEATH OF A U.S. SOLDIER, CONSTITUTED
AN "OFFENSE INTENDED TO COERCE, INTIMIDATE OR RETALIATE
AGAINST A GOVERNMENT OR A CIVILIAN POPULATION." UPON THE
AG'S CERTIFICATION, THE U.S. ATTORNEY FOR THE DIST. OF **

Referred To:		Date:	Referred To:	Date:	
(1)	DAG;TERWILLIGE	10-15-92	(5)		W/IN:
(2)	OAG;	10-15-92	(6)		
(3)	CRM;MUELLER	10-16-92	(7)		PRTY:
(4)			(8)		1
INTERIM BY:			DATE:		OPR:
Sig. For: AG.			Date Released: 10-16-92		MAU

Remarks

** COLUMBIA AND CRM'S TERRORISM AND VIOLENT CRIME SECTION
WILL SEEK THE INDICTMENT OF TWO PANAMANIAN NATIONALS WHO
HAVE BEEN IDENTIFIED AS PARTICIPANTS IN THE ATTACK AND
MURDER; THRU DAG; FOR AG SIGNATURE ON CERTIFICATION.
NOTE SHORT DUE DATE!! CRM HOPES TO SEEK RETURN OF
INDICTMENT ON FRIDAY, OCTOBER 16, 1992.

Other Remarks:

(1) FOR DAG CONCURRENCE.
(2) ODAG/WHITWELL CONCURRED FOR THE DAG ON 10-15-92;
FORWARDED TO AG FOR SIG. (CYN)
(3) AG SIGNED CERTIFICATE DATED 10-16-92. ORIGINAL PICKED-
UP FROM OAG BY CRM. CRM PROVIDED E.S. A COPY FOR AG FILE.TJ
OLA CONTACT:
10/15/92 RQW CONCURRED FOR DAG; TO E.S.
FILE: INDICTMENTS, AG CHRON

REMOVE THIS CONTROL SHEET PRIOR TO FILING AND DISPOSE OF APPROPRIATELY

14 OCTOBER 92

Action Memorandum

ATTORNEY GENERAL/DEPUTY ATTORNEY GENERAL/ASSOCIATE ATTORNEY GENERAL

Subject
Certification Pursuant to 18 U.S.C. § 2331(e)

Date

OCT 14 1992

CTS: 930000342

TO: The Attorney General

FROM: Robert S. Mueller, III
Assistant Attorney General
Criminal Division

Summary: On June 10, 1992, two U.S. servicemen traveling in military vehicle in Panama were attacked by terrorists resulting in the death of one of them. Before an indictment can be returned charging perpetrators with violations of 18 U.S.C. § 2331, you must certify that crimes were committed to intimidate or retaliate against the U.S. government or its nationals.

Action Required: Signature

Due Date/Action

Forcing Event: ASAP - We hope to seek return of indictment on Friday, October 16, 1992.

DOJ Coordination: Division/Component and Views (attach comments if other than concurrence)

N/A

Concurrences:

	DAG	ASG	OLC	OPC	OLA	JMD	OAPM
Initials	<i>By RSP</i>	N/A	N/A	N/A	N/A	N/A	N/A
Date	10/15/92						

External Coordination: Agency and Views (attach comments if other than concurrence).

N/A

Contact Point for

Additional Information: Dana Biehl, TVCS 514-0850



U. S. Department of Justice

Criminal Division


Office of the Assistant Attorney General

Washington, D.C. 20530

OCT 14 1992

MEMORANDUM

TO: The Attorney General

FROM:  Robert S. Mueller, III
Assistant Attorney General

SUBJECT: Certification Pursuant to 18 U.S.C. § 2331(e)

The purpose of this memorandum is to request that you exercise your statutory authority under 18 U.S.C. § 2331(e) by certifying that, in your opinion, the June 10, 1992 attack on United States military vehicle in Panama by several Panamanian nationals, which resulted in the death of a U.S. soldier, constituted an "offense * * * intended to coerce, intimidate or retaliate against a government or a civilian population."

Upon your certification, the United States Attorney for the District of Columbia and this Division's Terrorism and Violent Crime Section will seek the indictment of two Panamanian nationals who have been identified as participants in the attack and murder.

PERTINENT FACTS

On June 10, 1992 -- the day before President Bush was scheduled to visit Panama -- two U.S. soldiers, Corporal (CPL) Zak A. Hernandez-LaPorte and Sergeant (SGT) Ronald T. Marshall, were traveling on the Transisthmus Highway from Fort Davis, Panama to Camp Rosseau in a military vehicle known as a HMMV. CPL Hernandez was the driver; SGT Marshall was the passenger. The two were wearing their Army uniforms and were on official Army business.

At approximately 11:30 AM, a tan Toyota Starlet containing three male occupants, which had been following the HMMV for some distance, pulled out from behind it. When it came up alongside the HMMV, at least two of the occupants of the Toyota began firing into the HMMV. The shooter in the front seat fired an AK-47 automatic rifle; a shooter in the rear seat probably fired a handgun.

As a result of being struck by gunfire, CPL Hernandez lost consciousness and control of the HMMV. It veered off the road and rolled down an embankment where the vehicle came to rest on its side. CPL Hernandez was killed as the result of the gunfire; SGT

Marshall escaped the attack and subsequent wreck with superficial injuries.

The following day, Panamanian police found the Toyota automobile -- which had been stolen and then used in the attack -- abandoned. The vehicle contained eight shell casings for an AK-47 rifle. The Toyota was also identified as identical to one that had been used in an attack on a guard house at the entrance to Albrook Air Force Base on the night of June 9-10, 1992 -- just hours before the attack on the soldiers. On that occasion, the attackers had also used an AK-47 automatic rifle to fire rounds on the guard post. As marks on shell casings recovered from the Toyota matched those recovered after the Albrook attack, it is almost certain that the same rifle was used on both occasions.

Three Panamanian nationals, who had been riding in a van which the Toyota had passed just before the attack had an excellent opportunity to observe the crime. Indeed, they watched the Toyota and its occupants for a period of five minutes or more as it jockeyed for a position from which to launch the attack on the U.S. servicemen. The three witnesses were, therefore, able to identify two of the attackers from a photographic array. In particular, the witnesses identified Pedro Miguel Gonzales Pinzon (Gonzales) as one of the shooters, and Roberto Garrido as the driver of the Toyota. Gonzalez is the son of a Panamanian senator who is known to be allied with the Noriega regime and to harbor anti-American sentiments. Shortly after the attacks, an employee of Gonzales' sister, Lidia, informed law enforcement officers that Lidia had directed him to dispose of an AK-47 rifle and a pistol by burying them. With the employee's assistance, the Panamanian police recovered the weapons. Ballistics experts were able to determine that a slug from Hernandez' body was fired by the AK-47 as well as 11 shell casings found at the scene of the crime.

Panamanian authorities have charged both Gonzalez and Garrido with the murder of CPL Hernandez and have issued warrants for their arrests. Gonzalez is presently a fugitive and believed to have taken refuge in the mountainous area of Panama. Garrido now resides in Santo Domingo where local law enforcement authorities have agreed to convey him to the custody of the United States upon the receipt of an indictment.

DISCUSSION

The available evidence demonstrates that the attacks upon CPL Hernandez and SGT Marshall constitute murder and attempted murder under 18 U.S.C. § 2331(a), (b). That statute prohibits killing or attempting to kill a national of the United States while such national is outside the United States. The statute further requires, however, that:

[n]o prosecution for any offense described in this section shall be undertaken by the United States except on written certification of the Attorney General or the highest ranking subordinate of the Attorney General with responsibility for criminal prosecutions that, in the judgment of the certifying official, such offense was intended to coerce, intimidate, or retaliate against a government or a civilian population.

It is readily inferable that the June 10, 1992 murder and attempted murder of these soldiers satisfies the requirement that it was perpetrated for the purpose of intimidating or retaliating against the United States and its servicemembers serving in Panama. It is apparent from the manner in which this operation was conducted that a United States Army military vehicle carrying uniformed United States Army personnel was intentionally singled out for attack. The immediately preceding conduct of the perpetrators, which involved an attack on a United States military installation, reinforces the inference that they were bent upon terrorizing United States citizens associated with our military presence in Panama. In assessing the apparent objective of the attack, it is also highly significant that Gonzalez' father is a prominent opponent of a continued United States presence in Panama and that both attacks occurred on the eve of President Bush's visit to that country.

On the basis of the foregoing information, we, therefore, recommend that you execute the attached instrument of certification.



Office of the Attorney General
Washington, DC 20530

October 15, 1992

IN THE MATTER OF UNITED STATES ARMY PERSONNEL
ATTACKED IN PANAMA ON JUNE 10, 1992

I make the following certification in the discharge of my duties under 18 U.S.C. § 2331(e):

In my judgment, the killing of Corporal Zak A. Hernandez-Laporte and attempted killing of Sergeant Ronald T. Marshall, United States Army, on June 10, 1992, and the events surrounding that incident, were intended to coerce, intimidate, or retaliate against a government or a civilian population.

William P. Barr
Attorney General

DEPARTMENT OF JUSTICE
EXECUTIVE SECRETARIAT CONTROL DATA SHEET

From: JAMES, CHARLES A., ACTING AAG, ATR

To: AG.

ODD: 09-21-92

Date Received: 09-16-92 Date Due: 09-29-92 Control #: X92091613730

Subject & Date

09-16-92 MEMO REQUESTING APPROVAL TO INDICT FILIPPINO FIRMS
AND INDIVIDUALS FOR FIXING PRICES OF MOVING AND STORAGE
SERVICES BETWEEN THE UNITED STATES AND THE U.S. MILITARY
INSTALLATIONS IN THE PHILIPPINES; THRU ASG; FOR AG
APPROVAL/DISAPPROVAL.

	Referred To:	Date:	Referred To:	Date:	
(1)	ASG;BUDD	09-16-92	(5)		W/IN:
(2)	OAG;	09-22-92	(6)		
(3)	ATR;JAMES	09-28-92	(7)		PRTY:
(4)			(8)		1
	INTERIM BY:		DATE:		OPR:
	Sig. For: AG.		Date Released: 09-28-92		BJM

Remarks

(1) TO ASG FOR CONCURRENCE. RETURN THRU EXEC. SEC.
(2) ASG CONCURRED ON 09-21-92. TO AG FOR SIGNATURE. BJ
(3) AG APPROVED AND SIGNED REQUEST DATED 09-28-92.
ORIGINAL HANDCARRIED TO ATR FOR HANDLING ON 09-28-92.(TJ)

Other Remarks:

OLA CONTACT:

FILE: INDICTMENTS, AG CHRON

REMOVE THIS CONTROL SHEET PRIOR TO FILING AND DISPOSE OF APPROPRIATELY

16 SEPTEMBER 92

Action Memorandum

ATTORNEY GENERAL/DEPUTY ATTORNEY GENERAL



Subject Indictment: Defense
Procurement -- International Moving
and Storage

Date September 16, 1992

TO: William P. Barr
Attorney General

FROM: Charles A. James *CAS-*
Acting Assistant Attorney General
Antitrust Division

Summary: Request for confirmation of approval to indict Filipino firms and individuals for fixing prices of moving and storage services between the U.S. and U.S. military installations in the Philippines.

Action Required: Approval

Due Date/Action Forcing Event: September 22, 1992

DOJ Coordination: Division/Component and Views (attach comments if other than concurrence)

Concurrences: DAG OLC OPD OLA PAO JMD

Initials

Date

						<i>W3</i>			
						<i>9/21/92</i>			

External Coordination: Agency and Views (attach comments if other than concurrence).

State Department has no foreign policy objections.

Contact Point for Additional Information:

Charles S. Stark, Chief, Foreign Commerce
Section, Antitrust Division 514-2464



U.S. Department of Justice

Antitrust Division

Office of the Assistant Attorney General

Washington, D.C. 20530

September 16, 1992

MEMORANDUM FOR THE ATTORNEY GENERAL

Subject: Indictment: Defense Procurement --
International Moving and Storage

Action Memorandum

This memorandum requests your approval of an indictment charging price fixing on rates charged in the U.S. military for the transportation of household goods between the United States and the Philippines. Those indicted include certain Filipino individuals and corporations. This case involves allegations of anticompetitive conduct aimed at U.S. consumers and, thus, does not implicate our recently adopted enforcement policy with respect to export restraints. Although we consulted with your office prior to seeking the indictments, we failed to obtain your written approval, as is required by your memorandum of May 24, 1992. Accordingly, I request your approval, after the fact.

On September 9, 1992, the Antitrust Division sought and obtained an indictment in the Northern District of California of six corporations, five of which are Filipino, and six individuals, four of whom are Filipino, for having conspired from October 1990 until at least the end of March 1991 to fix the prices they charged U.S. freight forwarders for services performed in the Philippines in connection with the transportation of household goods between military bases in the Philippines and the United States.

The Department of Defense contracts with approximately 125 U.S. freight forwarders to transport the household goods of military families between the Philippines and the United States. The Philippine locations involved are Subic Naval Air Station and the Air Force Logistics Office, both of which are now being shut down, and Clark Air Force Base, which was destroyed by a volcano in 1991. Each of these freight forwarders is required by DOD regulations to be represented by an agent in the Philippines. For outbound shipments to the United States, the agents accept bookings on behalf of the U.S. freight forwarders they represent, pack the shipments, and transport the shipments by motor van from the U.S.

military installations to a port in the Philippines for transport to an overseas carrier. For inbound shipments, the agents pick up the shipments at the port, transport the shipments by motor vans to the final destination, and unload and unpack the shipments. In compensation for their service, the agents receive payments from the U.S. freight forwarders that they represent, who in turn bill DOD for payment for the entire move from origin to destination.

Between the Fall of 1990 and the Spring of 1991, officials of the seven Philippine firms involved in the U.S.-Philippine traffic met on a number of occasions and agreed on the rates they would charge U.S. freight forwarders for DOD work. Initial increases ranged from 300 to 600 percent, a level at which only the highest-priced U.S. freight forwarders could afford to remain in the U.S.-Philippine trade.

The corporate defendants charged in the indictment include five of the seven Philippine agents active in the U.S.-Philippine DOD trade and the U.S. parent company of one of those firms. The six individuals indicted include four Filipino officials of three of the indicted firms and two U.S. citizens who were officials of the U.S. corporate defendant. The core of our evidence against the defendants is the immunized grand jury testimony of other participants in the conspiracy.

Although the moving and storage services performed by the defendants were carried out in the Philippines, this case falls squarely within U.S. antitrust jurisdiction and is an appropriate case for criminal prosecution. The case does not raise the export restraint issues involved in our April 1992 policy change. The conduct involved is equivalent to a foreign cartel whose members fix the price on commodities sold into the United States. In this case, the defendants were selling a service to U.S. consumers -- the U.S. freight forwarders and, indirectly, DOD. The fact of the commodity in this case consisted of services rather than goods should have no impact as a matter of law or prosecutorial policy.

Cases involving "a naked private cartel agreement among horizontal competitors to fix the price and quantity of a product sold to U.S. consumers" fall squarely within our longstanding prosecutorial policy, as expressed in the Department's 1988 Antitrust Enforcement Guidelines for International Operations (pages 29, 78). As a matter of law, the Foreign Trade Antitrust Improvements Act of 1982 made it clear that the Sherman Act's subject matter jurisdiction reaches overseas conduct that has a direct, substantial and reasonably foreseeable effect on U.S. import or export commerce.

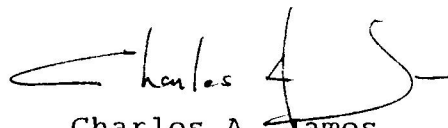
Although comity considerations could lead not to prosecute in some extraterritorial cases as a matter of prosecutorial discretion, particularly where the U.S. connections are tenuous, this is not such a case. In this instance the conspiracy was aimed expressly and exclusively at firms in the U.S., at least one conspiratorial meeting occurred in the United States, and there is

evidence of awareness that the agreement violated or could violate U.S. antitrust laws.

Although we do not anticipate any difficulty in establishing subject matter jurisdiction, some of the Filipino corporate and individual defendants may be beyond the reach of the U.S. courts' personal jurisdiction unless they voluntarily submit to jurisdiction. It is possible that some of the defendants who have business or personal interests in the United States may wish to consent to jurisdiction as part of a plea agreement. The Department has filed antitrust indictments against absent foreign defendants on many occasions in the past, and often has subsequently secured jurisdiction over all or some of them.

Consistent with our usual practice, we notified the Philippine government (through the State Department) of the pendency of the investigation. The Philippine Government in a diplomatic note and letter to Secretary Baker objected that U.S. law should not be applied extraterritorially in this case. The State Department responded, based on background we provided, that our proceeding was justified. I also met with officials of the Philippines embassy at their request, prior to filing the case. In addition, we specifically asked the State Department whether they had any foreign policy objection to our proceeding with the case, and they said they did not.

Subject to your approval, we will proceed with the prosecution of this case. A copy of the indictment is attached.



Charles A. James
Acting Assistant Attorney General

Approved:



Disapproved:

Date: 9/28/92

Attachment

1 REGINALD K. TOM
2 DENISE L. DIAZ
3 Antitrust Division
4 U.S. Department of Justice
5 Judiciary Center Building
6 555 4th Street, N.W.
7 Room 9415
8 Washington, D.C. 20001
9 (202) 307-6348

10 Attorneys for the United States

11
12 IN THE UNITED STATES DISTRICT COURT
13
14 FOR THE NORTHERN DISTRICT OF CALIFORNIA

15 UNITED STATES OF AMERICA)

16 v.)

17 TUCOR INTERNATIONAL, INC.;)
18 TUCOR INDUSTRIES, INC. d/b/a)
19 TUCOR MOVING & STORAGE;)
20 PHILIPPINE-AMERICAN MOVING &)
21 STORAGE CORPORATION;)
22 LUZON MOVING & STORAGE CORPORATION;)
23 D.M. NAZARENO & SONS, INC.;)
24 APEX MOVING & STORAGE CORPORATION;)
25 JOSE C. SINGSON, JR.;)
26 GEORGE SCHULZE, SR.;)
GEORGE SCHULZE, JR.;)
ARTURO G. "DOUGLAS" NAZARENO;)
PATRICK B. BOLL; AND)
DALE C. BAILEY,)

27 Defendants.)

Criminal No.

CR-92-0425 DLJ

Filed: 9/9/92

VIOLATION:

15 U.S.C. § 1

28 INDICTMENT

29 The Grand Jury charges:

30 I

31 DESCRIPTION OF THE OFFENSE

32 1. The following companies and individuals are hereby
33 indicted and made defendants on the charge stated below:

34 (a) Tucor International, Inc.; (b) Tucor Industries, Inc. d/b/a

1 Tucor Moving & Storage; (c) Philippine-American Moving &
2 Storage Corporation; (d) Luzon Moving & Storage Corporation;
3 (e) D.M. Nazareno & Sons, Inc.; (f) Apex Moving & Storage
4 Corporation; (g) Jose C. Singson, Jr.; (h) George Schulze, Sr.;
5 (i) George Schulze, Jr.; (j) Arturo G. "Douglas" Nazareno;
6 (k) Patrick B. Boll; and (l) Dale C. Bailey.

7 2. Beginning at least as early as October, 1990, and
8 continuing thereafter until at least March 31, 1991, the exact
9 dates being unknown to the Grand Jury, the defendants and
10 others entered into and engaged in a combination and conspiracy
11 to suppress competition by fixing prices for moving services
12 supplied in connection with the transportation of military
13 shipments of household goods between the Philippines and the
14 United States. The charged combination and conspiracy in
15 unreasonable restraint of United States foreign trade and
16 commerce violated Section 1 of the Sherman Act (15 U.S.C. § 1).

17 3. The charged combination and conspiracy consisted of a
18 continuing agreement, understanding, and concert of action
19 among the defendants and co-conspirators, the substantial term
20 of which was to increase to U.S. freight forwarders and the
21 United States Department of Defense the prices paid for moving
22 services.

23 4. For the purpose of forming and carrying out the
24 charged combination and conspiracy, the defendants and
25 co-conspirators did those things that they combined and
26 conspired to do, including, among other things:

- 1 (a) attended meetings at which they discussed and
2 agreed upon increasing the prices to be paid by
3 U.S. freight forwarders for moving services;
4 (b) published and disseminated rate sheets to U.S.
5 freight forwarders containing higher prices for
6 moving services;
7 (c) caused U.S. freight forwarders to cancel their
8 low rates filed with the U.S. Department of
9 Defense for the transportation of military
10 shipments of household goods between the
11 Philippines and the United States;
12 (d) attended meetings at which they discussed and
13 agreed upon the exclusive representation of two
14 U.S. freight forwarders with high rates on file
15 with the U.S. Department of Defense for the
16 transportation of military shipments of household
17 goods between the Philippines and the United
18 States;
19 (e) attended meetings at which they discussed and
20 agreed upon dividing among themselves allotments
21 of military shipments of household goods
22 transported between the Philippines and the
23 United States;
24 (f) divided among themselves allotments of military
25 shipments of household goods transported between
26 the Philippines and the United States;

- 1 (g) billed U.S. freight forwarders at higher prices
2 for moving services; and
3 (h) caused U.S. freight forwarders to bill the U.S.
4 Department of Defense at higher prices for the
5 transportation of military shipments of household
6 goods between the Philippines and the United
7 States.

8 II

9 DEFINITIONS

10 5. "Agent" means any individual or company that supplies
11 moving services and represents U.S. freight forwarders at any
12 U.S. military installation in the Philippines.

13 6. "Freight forwarder" means any individual or company
14 that files rates with the U.S. Department of Defense for the
15 transportation of military shipments of household goods between
16 the Philippines and the United States.

17 7. "Military shipments of household goods" means any
18 shipment of furniture, personal effects or unaccompanied
19 baggage owned by U.S. Department of Defense military or
20 civilian employees and their families that is transported
21 between the Philippines and the United States under a
22 Government Bill of Lading.

23 8. "Moving services" means the booking, packing,
24 unpacking, transportation by motor van, or delivery of military
25 shipments of household goods in transit between the Philippines
26 and the United States.

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III

DEFENDANTS AND CO-CONSPIRATORS

9. Tucor International, Inc. is incorporated in Nevada and has its principal place of business in Burlingame, California. The remaining defendant corporations are organized and exist under the laws of the Philippines, and all have their principal place of business in the Philippines. During the period covered by this indictment, each corporate defendant engaged in the business of providing moving services in connection with the transportation of military shipments of household goods between the Philippines and the United States.

10. During all or part of the period covered by this indictment, each of the individual defendants was an officer, owner, or agent of the companies indicated:

INDIVIDUAL
DEFENDANT

COMPANY

Jose C. Singson, Jr.

Apex Moving & Storage
Corporation

George Schulze, Sr.
George Schulze, Jr.

Luzon Moving & Storage
Corporation
Philippine-American Moving &
Storage Corporation

Arturo G. "Douglas" Nazareno

D.M. Nazareno & Sons, Inc.

Patrick B. Boll

Tucor Industries, Inc. d/b/a
Tucor Moving & Storage
Tucor International, Inc.

Dale C. Bailey

Tucor Industries, Inc. d/b/a
Tucor Moving & Storage

11. Various corporations and individuals, not made defendants in this indictment, participated as co-conspirators

1 in the offense charged and performed acts and made statements
2 in furtherance of it.

3 12. Whenever this indictment refers to any act, deed, or
4 transaction of any corporation, it means that the corporation
5 engaged in the act, deed or transaction by or through its
6 officers, directors, employees, agents, or other
7 representatives while they were actively engaged in the
8 management, direction, control or transaction of its business
9 or affairs.

10 IV

11 TRADE AND COMMERCE

12 13. The U.S. Department of Defense contracts with U.S.
13 freight forwarders for the transportation of military shipments
14 of household goods between the Philippines and the United
15 States. During the period covered by this indictment,
16 Department of Defense regulations required that, to be eligible
17 to receive or deliver military shipments of household goods in
18 the Philippines, a U.S. freight forwarder had to be represented
19 by an agent in the Philippines. For outbound shipments to the
20 United States, the agents accepted bookings on behalf of the
21 U.S. freight forwarders they represented from U.S. military
22 installations in the Philippines, packed the shipments, and
23 transported the shipments by motor van to a port in the
24 Philippines for transfer to an overseas carrier. For inbound
25 shipments, the agents picked up the shipments at the port,

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1 transported the shipments by motor van to the final
2 destination, and unloaded and unpacked the shipments. In
3 compensation for their services, the agents received payments
4 from the U.S. freight forwarders that they represented, who in
5 turn billed the U.S. Department of Defense for payment for the
6 transportation of the shipments between the Philippines and the
7 United States.

8 14. During the period covered by this indictment, the U.S.
9 Department of Defense accepted bids containing rates for the
10 transportation of household goods shipments between the
11 Philippines and the United States twice annually. After the
12 forwarders' filed rates became effective, they remained in
13 effect for a six-month period. The U.S. military installations
14 in the Philippines were responsible for offering military
15 household goods shipments to the U.S. freight forwarders with
16 the lowest rates on file and agency representation.

17 15. During the period covered by this indictment, rate
18 increases, shipment reports, and billing documents, all of
19 which were essential to the provision of moving services in the
20 Philippines, were sent by the defendants and co-conspirators to
21 U.S. freight forwarders in the United States in a continuous
22 and uninterrupted flow of United States foreign commerce.

23 16. During the period covered by this indictment, the
24 defendants and co-conspirators received substantial payments
25 from freight forwarders in the United States in a

26 ///

1 continuous and uninterrupted flow of United States foreign
2 commerce.

3 17. During the period covered by this indictment, supplies
4 and materials needed to provide moving services in the
5 Philippines were shipped from the United States to the
6 defendants and co-conspirators in the Philippines in a
7 continuous and uninterrupted flow of United States foreign
8 commerce.

9 18. During the period covered by this indictment, the
10 moving services provided by the defendants and co-conspirators
11 were essential to the movement of military personnel between
12 the United States and military installations in the
13 Philippines, which occurred in a continuous and uninterrupted
14 flow of United States foreign commerce.

15 19. The business activities of the defendants and
16 co-conspirators that are the subject of this indictment were
17 within the flow of, and substantially affected, United States
18 foreign trade and commerce.

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V

JURISDICTION AND VENUE

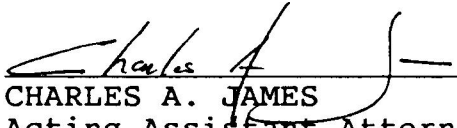
20. The combination and conspiracy charged in this indictment was formed and carried out, in part, within the Northern District of California within the five years preceding the return of this indictment.

ALL IN VIOLATION OF TITLE 15 U.S.C. SECTION 1.

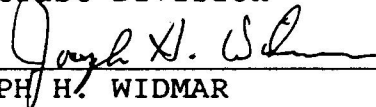
Dated this _____ day of _____ 1992

A TRUE BILL

Foreman



CHARLES A. JAMES
Acting Assistant Attorney General
Antitrust Division



JOSEPH H. WIDMAR

REGINALD K. TOM

DENISE L. DIAZ

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ROGER W. FONES

Attorneys, Antitrust Division
U.S. Department of Justice

JOHN A. MENDEZ
United States Attorney
Northern District of California

DEPARTMENT OF JUSTICE
EXECUTIVE SECRETARIAT CONTROL DATA SHEET

From: BONNER, ROBERT C., ADMINISTRATOR, DEA
To: DAG
Date Received: 11-09-92 Date Due: NONE ODD: NONE
Subject & Date Control #: X92110916252
07-30-92 MEMO REGARDING THE INDICTMENT OF A DEA EMPLOYEE.
(REC'D FROM OAG 11-09-92.)

	Referred To:	Date:		Referred To:	Date:	
(1)	OAG;FILES	11-09-92	(5)			W/IN:
(2)			(6)			
(3)			(7)			PRTY:
(4)			(8)			1Y
	INTERIM BY:			DATE:		OPR:
	Sig. For:	NONE		Date Released:		EHZ

Remarks

Other Remarks:

OLA CONTACT:

FILE: INDICTMENTS

REMOVE THIS CONTROL SHEET PRIOR TO FILING AND DISPOSE OF APPROPRIATELY

30 July 92



U.S. Department of Justice
Drug Enforcement Administration

Washington, D.C. 20537

JUL 30 1992

MEMORANDUM

TO: George J. Terwilliger, III
Deputy Attorney General

FROM: Robert C. Bonner *Robert C. Bonner*
Administrator of Drug Enforcement

SUBJECT: Indictment of Special Agent Thomas Bigoness

On July 30, 1992 a federal grand jury in Miami, Florida returned a nine-count indictment charging Special Agent Thomas Bigoness with perjury in United States vs Evarista and Balbino Ramos, Southern District of Florida, obstruction of justice, making false statements and conspiracy, in violation of Title 18, United States Code, Sections 1503, 1623, 1001 and 371, respectively.

The indictment charges that Special Agent Bigoness and a confidential informant, working for the Drug Enforcement Administration (DEA), committed perjury and made false statements in connection with the investigation and prosecution of Evaristo and Balbino Ramos on federal narcotics charges. In essence, the indictment alleges that Special Agent Bigoness lied under oath to avoid having evidence suppressed.

Bigoness and the informant allegedly conspired together to commit perjury and obstruct justice, and did in fact commit perjury and obstruct justice in an effort to conceal evidence of an unlawful search and seizure.

Bigoness was charged with three counts of perjury, one count of obstruction of justice, one count of making false statements and one count of conspiracy. The informant was charged with three counts of perjury, one count of obstruction of justice and one count of conspiracy.

This indictment is the result of an investigation conducted by DEA's Office of Professional Responsibility which has also resulted in the conviction and resignation of former Special Agent Phillip L. Kirkman.

The 1989 convictions of Evarista and Balbino Ramos were vacated in April 1992 and these defendants were released from prison.

I have attached a copy of the indictment and my cable to the field regarding this matter.

Attachments

ENS:lf

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

NO.

18 USC 1623(a)
18 USC 1503
18 USC 371
18 USC 1001
18 USC 2

UNITED STATES OF AMERICA

INDICTMENT

v.

THOMAS BIGONESS and
MARIA POLKOWSKI

The Grand Jury charges that:

GENERAL ALLEGATIONS

1. At all times relevant to this Indictment, defendant THOMAS BIGONESS was employed as a Special Agent of the United States Department of Justice, Drug Enforcement Administration ("DEA"), and was assigned to the DEA's Miami Field Division.

2. At all times relevant to this Indictment, defendant MARIA POLKOWSKI was working for the DEA as a documented confidential informant, providing services in exchange for payments from the DEA.

3. At all times relevant to this Indictment, unindicted co-conspirator Phillip Kirkman was employed as a Special Agent of the DEA, and was assigned to the DEA's Miami Field Division.

4. At all times relevant to this Indictment, defendants THOMAS BIGONESS and MARIA POLKOWSKI, and Phillip Kirkman, were involved in the investigation and subsequent arrest and prosecution

of Balbino Ramos and Evaristo Ramos on federal narcotics charges arising from their alleged agreement to sell multiple kilograms of cocaine to defendant MARIA POLKOWSKI, who was working in her capacity as a confidential informant. The arrest of Balbino Ramos and Evaristo Ramos took place on or about December 8, 1988, at their house, where approximately eight (8) kilograms of cocaine were seized.

5. At all times relevant to this Indictment, Federal Grand Jury 88-7 (MIA) was a duly empaneled United States District Court Grand Jury, sitting in the Southern District of Florida. On or about December 16, 1988, Grand Jury 88-7 returned an indictment against Balbino Ramos and Evaristo Ramos ("the Ramos brothers") based solely on the sworn testimony of defendant THOMAS BIGONESS. The testimony by defendant THOMAS BIGONESS was material to the Grand Jury's investigation and return of the indictment against the Ramos brothers.

6. At all times relevant to this Indictment, the Honorable Kenneth L. Ryskamp was a District Judge of the United States District Court for the Southern District of Florida. As part of his official duties, Judge Ryskamp was assigned to preside over the aforementioned case against the Ramos brothers, styled United States v. Balbino Ramos and Evaristo Ramos, Case No. 88-863-CR-RYSKAMP.

7. On or about March 29 and 31, 1989, Judge Ryskamp presided over a hearing on a motion to suppress evidence filed by the Ramos brothers. This motion was denied after Judge Ryskamp heard sworn

and in DEA official reports, in order to conceal evidence of an unlawful search and seizure and thereby influence, impede and obstruct the investigation, arrest and prosecution of the Ramos brothers.

4. It was further a purpose and object of the conspiracy to arrange for, procure and encourage false testimony to be presented to Grand Jury 88-7, to influence, impede and obstruct that Grand Jury's consideration of the indictment and superseding indictment proposed against the Ramos brothers.

5. It was further a purpose and object of the conspiracy to arrange for, procure, and encourage false testimony to be presented to Judge Ryskamp to conceal evidence of an unlawful search and seizure and thereby influence, impede and obstruct Judge Ryskamp's consideration of the motion to suppress filed by the Ramos brothers.

6. It was further a purpose and object of the conspiracy to arrange for, procure, and encourage false testimony to be presented to Judge Ryskamp and the trial jury to conceal evidence of an unlawful search and seizure and thereby influence, impede and obstruct their consideration of, and verdict in, the trial of the Ramos brothers.

7. It was further a purpose and object of the conspiracy for defendant THOMAS BIGONESS to commit perjury before Grand Jury 88-7, and before Judge Ryskamp and the trial jury, regarding the facts and circumstances surrounding the arrest of the Ramos brothers and his own involvement in the case.

8. It was further a purpose and object of the conspiracy for defendant MARIA POLKOWSKI to commit perjury before Judge Ryskamp and the trial jury regarding the facts and circumstances surrounding the arrest of the Ramos brothers, and her own involvement in the case.

OVERT ACTS

In furtherance of this conspiracy and to effect the objects thereof, there were committed, by at least one of the co-conspirators herein, in the Southern District of Florida, and elsewhere, at least one of the following overt acts, among others:

A. On or about December 8, 1988, at Homestead, Florida, defendant THOMAS BIGONESS and Phillip Kirkman agreed to falsely report the circumstances leading up to the arrest of Balbino Ramos and Evaristo Ramos, by fabricating a story that Evaristo Ramos had given defendant MARIA POLKOWSKI a bag of cocaine in an open carport on the Ramos brothers' property prior to the arrest of the Ramos brothers.

B. On or about December 8, 1988, at Miami, Florida, defendant THOMAS BIGONESS prepared a DEA Form 453 (Record/Receipt of Seized Asset) which falsely stated that on December 8, 1988, Evaristo Ramos retrieved approximately four kilograms of cocaine from a black Chevrolet Corvette.

C. On or about December 16, 1988, at Miami, Florida, defendant THOMAS BIGONESS testified falsely before Grand Jury 88-7.

D. On or about March 29, 1989, at Miami, Florida, defendant THOMAS BIGONESS testified falsely before Judge Ryskamp during the

hearing on the Ramos brothers' motion to suppress evidence.

E. On or about June 16, 1989, at Miami, Florida, defendant THOMAS BIGONESS testified falsely before Grand Jury 88-7.

F. On or about September 5, 1989, at Miami, Florida, defendant MARIA POLKOWSKI testified falsely before Judge Ryskamp and the jury during the trial of the Ramos brothers.

G. On or about September 6, 1989, at Miami, Florida, defendant THOMAS BIGONESS testified falsely before Judge Ryskamp and the jury during the trial of the Ramos brothers.

All in violation of Title 18, United States Code, Section 371.

COUNT II

1. The General Allegations above are hereby incorporated by reference as if fully set forth herein.

2. From on or about December 8, 1988, up to and including on or about September 12, 1989, at Miami, Dade County, in the Southern District of Florida, and elsewhere, the defendants,

**THOMAS BIGONESS
AND
MARIA POLKOWSKI,**

did knowingly, willfully and corruptly influence, obstruct and impede, and endeavor to influence, obstruct and impede, the due administration of justice by making false statements to DEA agents and by lying under oath before Grand Jury 88-7 and District Judge Ryskamp and the trial jury, and by inducing and encouraging others to make false statements to DEA agents and to lie under oath before the same Grand Jury, District Judge and trial jury, regarding the

events of December 8, 1988 leading up to the arrest of the Ramos brothers, specifically, to falsely state that Evaristo Ramos took defendant MARIA POLKOWSKI to an open carport and gave her a bag containing packages of cocaine, and that defendant MARIA POLKOWSKI gave the pre-arranged arrest signal only after she had seen these packages of cocaine.

All in violation of Title 18, United States Code, Sections 1503 and 2.

COUNT III

1. The General Allegations above are hereby reincorporated by reference as if fully set forth herein.

2. On or about December 16, 1988, at Miami, Dade County, in the Southern District of Florida, the defendant,

THOMAS BIGONESS,

while under oath before the Grand Jury in the presentation of the aforementioned indictment against the Ramos brothers, did knowingly and willfully make false material declarations by testifying to, in substance, the following: that on December 8, 1988, a confidential informant went to the Ramos brothers' house, entered the house and observed a quantity of cocaine, and then came outside and gave an arrest signal.

3. The aforesaid testimony of the defendant, THOMAS BIGONESS, as he then and there well knew, believed and remembered, was false, in that the defendant, THOMAS BIGONESS, had been told by Phillip Kirkman immediately after the arrest of the Ramos brothers on December 8, 1988, that the confidential informant did not enter the

house or observe any cocaine prior to giving the arrest signal to the agents.

All in violation of Title 18, United States Code, Section 1623(a).

COUNT IV

1. The General Allegations above are hereby reincorporated by reference as if fully set forth herein.

2. On or about June 16, 1989, at Miami, Dade County, in the Southern District of Florida, the defendant,

THOMAS BIGONESS,

while under oath before the Grand Jury in the presentation of the aforementioned Superseding Indictment against the Ramos brothers, did knowingly and willfully make false material declarations by testifying to, in substance, the following: that subsequent to his initial testimony before the Grand Jury on December 16, 1988, he first learned from Phillip Kirkman that what actually occurred on December 8, 1988 was that Evaristo Ramos retrieved a bag of cocaine from an open carport and gave it to defendant MARIA POLKOWSKI, who then gave the arrest signal, and therefore his testimony before the Grand Jury on December 16, 1988 was incorrect.

3. The aforesaid testimony of the defendant, THOMAS BIGONESS; as he then and there well knew, believed and remembered, was false, in that the defendant, THOMAS BIGONESS, had been told by Phillip Kirkman, immediately after the arrest of the Ramos brothers, and prior to the time of his Grand Jury testimony on December 16, 1988, that Evaristo Ramos had not retrieved a bag of cocaine from the

open carport and had not given anything to defendant MARIA POLKOWSKI prior to her giving the arrest signal.

All in violation of Title 18, United States Code, Section 1623(a).

COUNT V

1. The General Allegations above are hereby incorporated by reference as if fully set forth herein.

2. On or about September 6, 1989, at Miami, Dade County, in the Southern District of Florida, the defendant,

THOMAS BIGONESS,

while under oath before the District Judge and jury in the aforementioned jury trial, did knowingly and willfully make false material declarations by testifying to, in substance, the following: that he did not discuss the circumstances leading up to the arrest of the Ramos brothers with other agents on the day of their arrest; and that he did not learn that Evaristo Ramos retrieved a bag of cocaine from the carport and passed it to defendant MARIA POLKOWSKI until Phillip Kirkman told him about it in the days after he testified before the Grand Jury on December 16, 1988.

3. The aforesaid testimony of the defendant, THOMAS BIGONESS, as he then and there well knew, believed and remembered, was false, in that the defendant, THOMAS BIGONESS, did discuss the actual circumstances leading up to the arrest of the Ramos brothers with Phillip Kirkman shortly after the arrest of the Ramos brothers on December 8, 1988; and did agree with Phillip Kirkman at that time

to fabricate the story that Evaristo Ramos retrieved a bag of cocaine from the carport and gave it to defendant MARIA POLKOWSKI.

All in violation of Title 18, United States Code, Section 1623(a).

COUNT VI

1. The General Allegations above are hereby reincorporated by reference as if fully set forth herein.

2. On or about September 5, 1989, at Miami, Dade County, in the Southern District of Florida, the defendant,

MARIA POLKOWSKI,

while under oath before the District Judge and jury in the aforementioned jury trial, did knowingly and willfully make false material declarations by testifying to, in substance, the following: that on December 6, 1988, she spoke by telephone with the Ramos brothers and discussed the purchase of cocaine with Balbino Ramos, and that during the conversation, Balbino Ramos invited her to the Ramos brothers' residence on December 7, 1988 to discuss the details of this cocaine transaction.

3. The aforesaid testimony of the defendant, MARIA POLKOWSKI, as she then and there well knew, believed and remembered, was false, in that the defendant, MARIA POLKOWSKI, did not have a telephone conversation with either of the Ramos brothers on December 6, 1988, and neither of the Ramos brothers invited the defendant, MARIA POLKOWSKI, to their house to discuss a cocaine transaction.

All in violation of Title 18, United States Code, Section

COUNT VIII

1. The General Allegations above are hereby reincorporated by reference as if fully set forth herein.

2. On or about September 5, 1989, at Miami, Dade County, in the Southern District of Florida, the defendant,

MARIA POLKOWSKI,

while under oath before the District Judge and jury in the aforementioned jury trial, did knowingly and willfully make false material declarations by testifying to, in substance, the following: that on December 8, 1988, she met with Evaristo Ramos in front of his house and discussed their cocaine deal, at which time he took her to an open carport and gave her a brown paper bag containing packages of cocaine; and that he then walked towards his house to get the rest of the cocaine and defendant MARIA POLKOWSKI, after seeing the packages of cocaine, gave the arrest signal to Phillip Kirkman, the DEA agent who accompanied her to the house.

3. The aforesaid testimony of the defendant, MARIA POLKOWSKI, as she then and there well knew, believed and remembered, was false, in that the defendant, MARIA POLKOWSKI, did not discuss a cocaine deal with Evaristo Ramos on December 8, 1988, did not receive a brown paper bag containing packages of cocaine from Evaristo Ramos at the carport, and did not see any packages of cocaine before giving the arrest signal to Phillip Kirkman.

All in violation of Title 18, United States Code, Section 1623(a).

COUNT IX

On or about December 8, 1988, at Miami, Dade County, in the Southern District of Florida, the defendant,

THOMAS BIGONESS,

in a matter within the jurisdiction of the Drug Enforcement Administration, an agency of the United States, did knowingly and willfully make a false, fraudulent and fictitious statement and representation as to a material fact, in that the defendant stated in a DEA Form 453 (Record/Receipt of Seized Asset) that on December 8, 1988, Evaristo Ramos had removed approximately four kilograms of cocaine from a black Chevrolet Corvette, when in truth and in fact, and as the defendant then and there well knew, Evaristo Ramos had not removed approximately four kilograms of cocaine from that Corvette on that date.

All in violation of Title 18, United States Code, Section 1001.

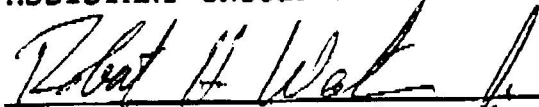
A TRUE BILL

FOREPERSON

ROBERTO MARTINEZ
UNITED STATES ATTORNEY



EDWARD N. STAMM
ASSISTANT UNITED STATES ATTORNEY



ROBERT H. WATERS, JR.
ASSISTANT UNITED STATES ATTORNEY

DEPARTMENT OF JUSTICE
EXECUTIVE SECRETARIAT CONTROL DATA SHEET

From: HANKINSON, RICHARD J., INSPECTOR GENERAL

To: AG.

Date Received: 11-12-92 Date Due: NONE

ODD: NONE

Control #: X92111616576

Subject & Date

(NOTE: REC'D FROM OAG ON 11-12-92.)

Referred To: Date:
(1) OAG;FILES 11-16-92

(2)

(3)

(4)

INTERIM BY:
Sig. For: NONE

Referred To: Date:

(5)

(6)

(7)

(8)

DATE:
Date Released:

W/IN:

PRTY:

1S

OPR:

EHZ

Remarks

CC INDICATED FOR DAG, PAO.

Other Remarks:

OLA CONTACT:

FILE: INDICTMENTS

REMOVE THIS CONTROL SHEET PRIOR TO FILING AND DISPOSE OF APPROPRIATELY

7 July 92



U.S. Department of Justice

Office of the Inspector General

The Inspector General

Washington, D.C. 20530

FOIA(b)(3) - Fed. R. Crim. Pro. 6(e) - Grand Jury

July 7, 1992

MEMORANDUM FOR WILLIAM P. BARR
ATTORNEY GENERAL

FROM:

Richard J. Hankinson
RICHARD J. HANKINSON
INSPECTOR GENERAL

SUBJECT:

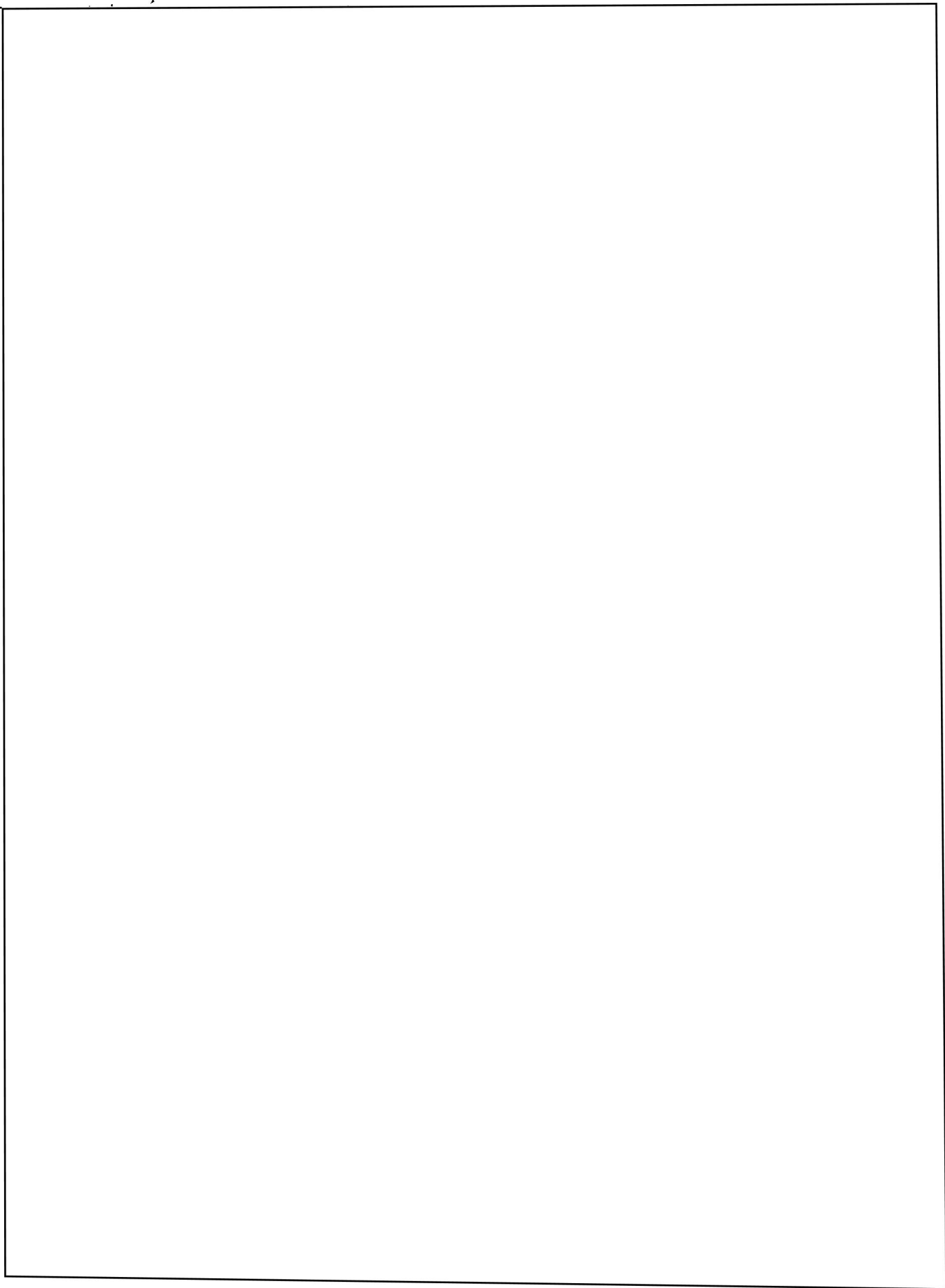
On June 27, 1992, the Washington Post aired this alleged corruption at the Arlington office after the OIG arrested one individual who owns a business that helps immigrants obtain documents.

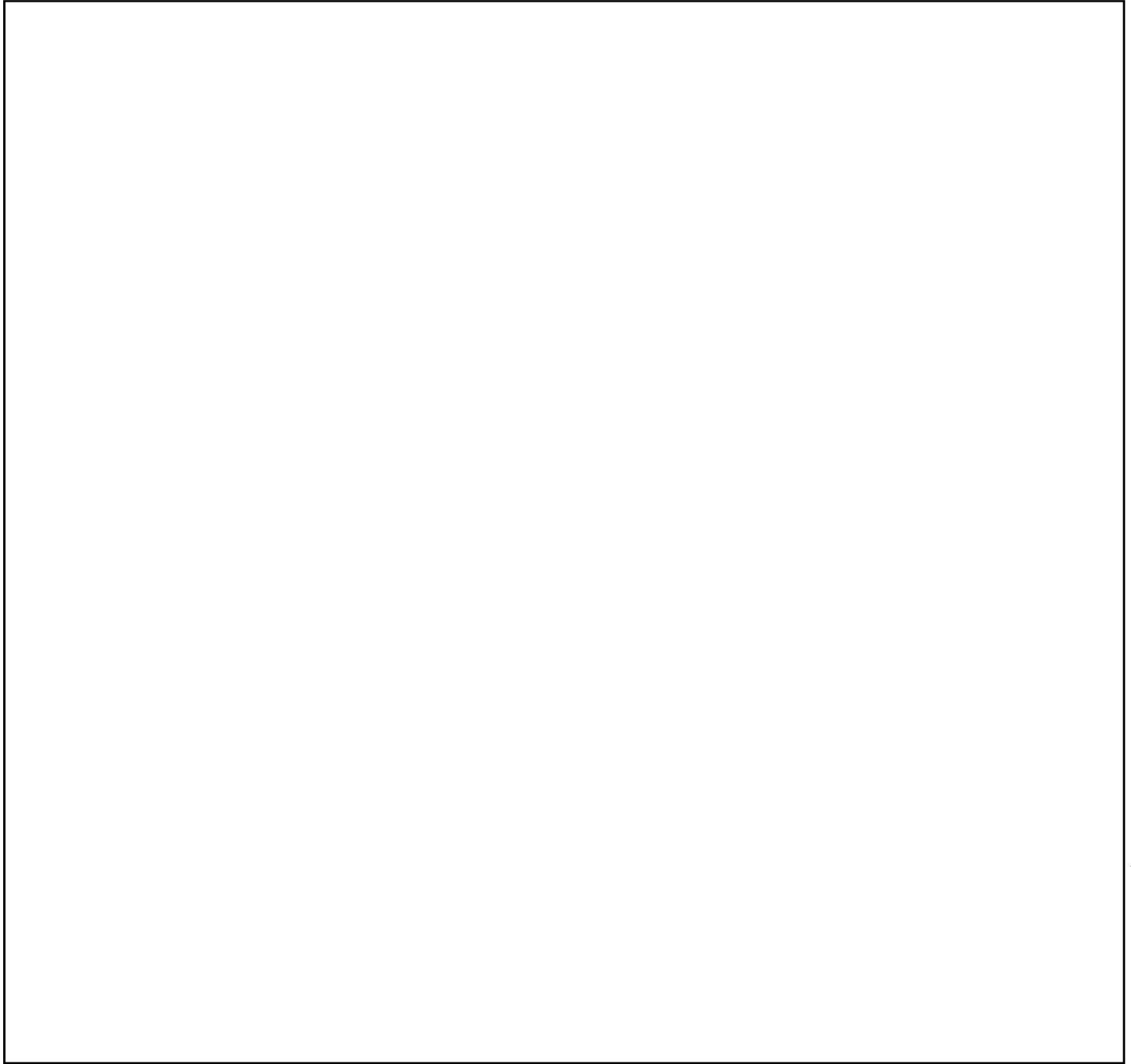
I am attaching a brief resume of the suspects and the charges.

Attachments

cc: George J. Terwilliger
Deputy Attorney General

Frank Shults, Director
Office of Public Affairs





FOIA(b)(3) - Fed. R. Crim. Pro. 6(e) - Grand Jury

Screened by NARA (RD-F) 02-07-2019
FOIA # 60048 (URTS 16457) DOCID:
70106678

DEPARTMENT OF JUSTICE
EXECUTIVE SECRETARIAT CONTROL DATA SHEET

From: GARFINKEL, STEVEN, INFORMATION SECURITY OVERSIGHT OFFICE, DC
To: AG. ODD: NONE
Date Received: 03-30-92 Date Due: NONE Control #: X92033005064
Subject & Date
03-25-92 LETTER ENCLOSING A COPY OF THE INFORMATION SECURITY
OVERSIGHT OFFICE'S (ISOO) "ANNUAL REPORT TO THE PRESIDENT
FY 1991." ALSO ENCLOSURES A COPY OF THE PRESIDENT'S LETTER IN
RESPONSE TO THE REPORT.

	Referred To:	Date:	Referred To:	Date:	
(1)	JMD;FLICKINGER	03-30-92	(5)		W/IN:
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	Sig. For:	NONE	Date Released:		MAU

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INFO CC WITHOUT COMPLETE ENCLOSURES: OAG, DAG, ASG.
(1) FOR INFORMATION, WITH ORIGINAL ENCLOSURES.

Other Remarks:

GRG 03-30-92
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25
MARCH 92



Information Security Oversight Office
750 17th Street, NW., Suite 530
Washington, DC 20006



March 25, 1992

Dear Mr. Attorney General:

I am pleased to provide you with a copy of the Information Security Oversight Office's (ISOO) "Annual Report to the President FY 1991." I also enclose a copy of the President's letter in response to the Report.

Sincerely,

Steven Garfinkel
Director

The Honorable
William P. Barr
Attorney General of
the United States
Constitution Avenue and 10th Street, NW
Washington, DC 20530

Enclosures

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THE WHITE HOUSE

WASHINGTON

March 17, 1992

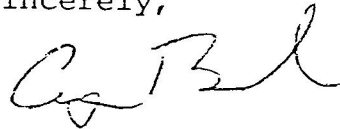
Dear Mr. Garfinkel:

I take great interest in your Report for 1991. I was very pleased to learn that your reviews confirm the admirable performance of the information security system during Operation Desert Shield and Operation Desert Storm. The expedited declassification of much of that information will provide an even clearer picture of the outstanding performance of our armed forces during the Persian Gulf crisis.

I am also interested in your observations concerning the possible early effects on classification activity that may be the result of the changing world order. Please continue your interagency examination of how the information security system might be modified or reconstructed to meet the demands of the evolving national security environment.

The efforts of you, your staff and the many others in Government and industry responsible for our information security system continue to receive my whole-hearted support.

Sincerely,



Mr. Steven Garfinkel
Director
Information Security Oversight Office
750 17th Street, N.W., Suite 530
Washington, D.C. 20006

*Information
Security
Oversight
Office*

1991



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DEPARTMENT OF JUSTICE
EXECUTIVE SECRETARIAT CONTROL DATA SHEET

From: ROSSIDES, EUGENE T., AMER. HELLENIC INST. PUB. AFF. COMM., DC
To: PRESIDENT BUSH (CC: AG.) ODD: NONE
Date Received: 06-19-92 Date Due: NONE Control #: X92061909426
Subject & Date

06-17-92 LETTER (COPY) ENCLOSING A COPY OF HIS TESTIMONY
BEFORE THE REPUBLICAN PLATFORM COMMITTEE ON JUNE 15, 1992,
IN WHICH HE DISCUSSES THE TWO ISSUES OF PARAMOUNT CONCERN TO
AMERICANS OF GREEK DESCENT, THE SKOPJE REGIME'S PROVOCATION
AGAINST GREECE BY THE USE OF THE GREEK NAME MACEDONIA, AND
TURKEY'S CONTINUING 18-YEAR-OLD ILLEGAL OCCUPATION OF ALMOST
40 PERCENT OF CYPRUS.

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Remarks

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17 June 92



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June 17, 1992

'92 JUN 19 10:53

EXECUTIVE SECRET

The Honorable
George Bush
The White House
Washington, DC 20500

Dear Mr. President:

I am enclosing a copy of my testimony before the Republican Platform Committee on June 15, 1992 in which I discuss the two issues of paramount concern to Americans of Greek descent--the Skopje regime's provocation against Greece by the use of the Greek name Macedonia and Turkey's continuing eighteen year-old illegal occupation of almost 40% of Cyprus.

Macedonia

In my testimony I list twenty-two reasons why it is not in the interests of the United States to recognize the Skopje regime under the Greek name of Macedonia.

There is no unqualified universally accepted rule of international law that authorizes a state to name itself anything it wants. In 1944 our government opposed Tito's changing the name of the Skopje area of Yugoslavia from Vardar Banovina to Macedonia and characterized:

talk of Macedonian "nation", Macedonian "Fatherland", or Macedonian "national consciousness" to be unjustified demagoguery representing no ethnic nor political reality, and sees in its present revival a possible cloak for aggressive intentions against Greece.

The approved policy of this Government is to oppose any revival of the Macedonian issue as related to Greece.

Our policy was valid then and it is valid now.

The Skopje regime's President Gligorov, Tito's communist protege, can and has been able to end the problem overnight by reinstating the name the Skopje area had in 1944--Vardar Banovina.

Cyprus

I list in my testimony twenty-one reasons why it is not in the interests of the United States to give aid to Turkey, each of which is reason enough to halt all military and economic aid to Turkey, and several of which justify immediate economic sanctions against Turkey.

On July 7, 1988, you stated as a presidential candidate:

We seek for Cyprus a constitutional democracy based on majority rule, the rule of law, and the protection of minority rights....I want to see a democratic Cyprus free from the threat of war.

We applauded that statement. It was the first time that a high policy official had made such a positive substantive statement of American policy on Cyprus. The contents of that statement are fundamental to the pursuit of United States interests throughout the world. We have commended your direct involvement and that of Secretary James A. Baker III in the Cyprus problem as crucial to progress and a satisfactory settlement of the problem. We have also commended your several references that the status quo on Cyprus is unacceptable.

Your efforts and those of Secretary Baker are in large part responsible for the meetings on the Cyprus problem tomorrow in New York under the auspices of the United Nations Secretary General.

We are not hopeful that Turkey and the illegal Turkish Cypriot regime, which represents an 18% minority, will be forthcoming with positive substantive proposals at these meetings, given their past negotiating tactics and the fact that United States aid subsidizes all of the costs to Turkey of its occupation of almost 40% of northern Cyprus and its subsidy to the Turkish Cypriot regime.

I hope we are wrong.

If Turkey and the Turkish Cypriot regime are not forthcoming at these meetings then we strongly urge in the interests of the United States that you immediately halt all aid to Turkey and consider economic sanctions against Turkey.

Any settlement to be in the interests of the United States must be based on fundamental democratic principles to be viable and lasting and to serve as a precedent in our efforts to build a new world order based on freedom and the rule of law.

Respectfully,


Eugene T. Rossides

cc: The Honorable James A. Baker III, Secretary of State
The Honorable Dick Cheney, Secretary of Defense
The Honorable Nicholas Brady, Secretary of the Treasury

The Honorable William P. Barr, Attorney General
The Honorable Samuel Skinner, Chief of Staff
The Honorable Brent Skowcroft, Assistant to the President for
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The Honorable Lawrence S. Eagleburger, Deputy Secretary of State
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Bureau of Politico-Military Affairs
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The Honorable Michael Sotirhos, Ambassador to Greece
The Honorable Richard C. Barkley, Ambassador to Turkey
The Honorable Robert E. Lamb, Ambassador to Cyprus
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and Budget
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Statement of
Eugene T. Rossides
on behalf of
The American Hellenic Institute Public Affairs Committee, Inc.,
The Order of AHEPA and
The Cyprus Federation of America, Inc.
before the
Platform Committee of the Republican National Committee
Washington, D.C., June 15, 1992

Chairman Nickles and Members of the Platform Committee:

I appreciate the opportunity to appear before you today on behalf of the American Hellenic Institute Public Affairs Committee, Inc., the Order of AHEPA, the largest Greek American fraternal organization, and the Cyprus Federation of America, Inc.

There are two foreign policy issues of paramount concern to Americans of Greek descent--the Skopje regime's provocation against Greece by the use of the Greek name Macedonia and Turkey's continuing eighteen year-old illegal occupation of almost 40% of Cyprus.

In the area of foreign policy we propose in the interests of the United States the following three planks:

1. The Skopje regime should not be recognized under the Greek name of Macedonia.

There is no unqualified universally accepted rule of international law that authorizes a state to name itself anything it wants.

In 1944-45 the United States opposed Tito's changing of the name of the Skopje area of Yugoslavia from Vardar Banovina to Macedonia. Secretary of State Edward R. Stettinius, Jr., in a Circular Airgram (Dec. 26, 1944) stated:

This Government considers talk of Macedonian "nation", Macedonian "Fatherland", or Macedonian "national consciousness" to be unjustified demagoguery representing no ethnic nor political reality, and sees in its present revival a possible cloak for aggressive intentions against Greece.

The approved policy of this Government is to oppose any revival of the Macedonian issue as related to Greece. (See Exhibit 1 for full text.)

Our policy was valid then and it is valid now.

The Skopje regime's President Gligorov, Tito's communist protege, can end the problem overnight by reinstating the name the Skopje area had in 1944--Vardar Banovina--before Tito changed it.

We commend President Bush for withholding recognition of the Skopje regime to date. The European Community on December 16, 1992 set forth the following three conditions that a Yugoslav republic is required to commit itself to prior to recognition:

-- "to adopt constitutional and political guarantees ensuring that it has no territorial claims towards a neighboring Community State;"

-- "that it will conduct no hostile propaganda activities versus a neighboring Community State;" and

-- that it will not make "use of a denomination which implies territorial claims."

We strongly recommend that the Administration continue to support these conditions and urge the European Community to stand firm on these conditions.

In the discussion section below I list twenty-two reasons why it is not in the interests of the United States to recognize the Skopje regime under the Greek name of Macedonia.

2. The rule of law should be applied to Turkey's invasion and occupation of almost 40% of Cyprus in 1974 by applying the Iraq/Kuwait precedent to Turkey/Cyprus in the form of economic sanctions against Turkey.

3. No military or economic aid should even be considered for Turkey until the conditions in H.R. 4399 and S.2019 are met. H.R. 4399 was introduced on March 5, 1992 by Representatives Bill Green (R-NY), Robert Mrazek (D-NY) and Nancy Pelosi (D-CA). The initiators and co-sponsors to date total 53 (See Exhibit 2).

It is unreasonable and not in the interests of the United States to continue military and economic aid to Turkey in view of the end of the Cold War, the demise of the Warsaw Pact, the breakup of the Soviet Union, the demise of communism there and in Eastern Europe, the lack of any meaningful threat to Turkey, the reduction of armed forces in the United States, NATO and the former U.S.S.R., the closing of five more United States listening posts in Turkey, the numerous and continuing violations of international laws, treaties and charters by Turkey, the massive and continuing human rights violations by Turkey in Turkey and in Cyprus, our huge budget deficit and our enormous domestic needs.

Our massive aid to Turkey has been a major obstacle to a settlement of the Cyprus problem since the remaining partial embargo was lifted in 1978.

Since money is fungible our tax dollars pay for the entire annual cost to Turkey of its illegal occupation forces and colonists in Cyprus, its subsidy to the illegal Denktash regime, and its payments to its foreign agents in the United States (Hill & Knowlton, at \$1.1 million, International Advisors, Inc., at \$.8 million and \$1.7 million to three other foreign agents).

H.R. 4399 provides that before any aid can go to Turkey the President must certify to Congress that:

(1) the Government of Turkey has released, returned, or accounted for the 5 Americans who were abducted by the Turkish invasion forces in 1974 and the 1,614 Greek Cypriots who have been missing since the Turkish invasion;

(2) the churches in the occupied parts of Cyprus that were illegally converted to mosques in violation of the 1949 Geneva Conventions have been restored to their original condition for Christian worship;

(3) all Turkish military forces in excess of those permitted by the 1960 Treaty of Alliance, and all illegal Turkish colonists, have been withdrawn from Cyprus;

(4) the Government of Turkey has returned to the Government of Cyprus under the auspices of the United Nations the formerly Greek Cypriot area of Famagusta/Varosha for the immediate resettlement of displaced persons;

(5) the negotiations under United Nations auspices have resulted in significant progress towards establishing a constitutional democracy in Cyprus based on majority rule, the rule of law, and the protection of minority rights;

(6) the Government of Turkey is in compliance with paragraph 4 of Article 2 of the United Nations Charter and with relevant United Nations resolutions on Cyprus, including General Assembly Resolution 3212 of November 1, 1974 (which was endorsed by Security Council Resolution 365 of December 13, 1974), and Security Council Resolutions 353, 354, 357, 358, and 360 of 1974;

(7) the Government of Turkey is in compliance with the Preamble and Article 1 of the North Atlantic Treaty; and

(8) the Government of Turkey is not engaged in a consistent pattern of gross violations of internationally recognized human rights (within the meaning of sections 116 and 502B of the Foreign Assistance Act of 1961).

In the Senate, S.2019, introduced by Senator Pressler (R-SD) and cosponsored by Senator D'Amato (R-NY), has similar provisions except for number (2).

We suggest two additional conditions, namely:

(1) that Turkey halts its massive violations of the human rights of its Kurdish citizens; and

(2) that the property of United States citizens, illegally taken by Turkish forces and the illegal Denktash Turkish Cypriot regime, has been returned and the gains from the use of said property have been turned over to the United States owners.

In the discussion section I list twenty-one reasons why it is not in the interests of the United States to give aid to Turkey, each of which is reason enough to halt all military and economic aid to Turkey, and several of which justify immediate economic sanctions against Turkey.

Vice President Bush stated on July 7, 1988, as a presidential candidate:

We seek for Cyprus a constitutional democracy based on majority rule, the rule of law, and the protection of minority rights....I want to see a democratic Cyprus free from the threat of war.

We applauded that statement, particularly since it was the first time that a high policy official had made such a positive substantive statement of American policy on Cyprus. The contents of that statement are, of course, fundamental to the pursuit of United States interests throughout the world.

We have commended President Bush's direct involvement and that of Secretary James A. Baker III in the Cyprus problem. The elevation to the presidential and secretarial levels is crucial to progress and a satisfactory settlement of the problem.

We have also commended the several references by President Bush that the status quo on Cyprus is unacceptable. His efforts and those of Secretary Baker are in large part responsible for the meetings on the Cyprus problem that are to take place later this week in New York under the auspices of the United Nations Secretary General.

We are not hopeful that Turkey and the illegal Turkish Cypriot regime, which represents an 18% minority, will be forthcoming with positive substantive proposals at these meetings, given their past negotiating tactics and the fact that United States aid subsidizes all of the costs to Turkey of its occupation of close to 40% of northern Cyprus and its subsidy to the Turkish Cypriot regime.

I hope we are wrong.

If Turkey and the Turkish Cypriot regime are not forthcoming at these meetings then we strongly urge in the interests of the United States that the Republican Platform include the planks on Cyprus that we have recommended in order to strengthen the President's hand and to send a firm signal to Turkey.

If Turkey does not cooperate the President will lose all of the goodwill he has built up if he does not halt all aid to Turkey and consider economic sanctions against Turkey.

Any settlement to be in the interests of the United States must be based on fundamental democratic principles to be viable and lasting and to serve as a precedent in our efforts to build a new world order based on freedom and the rule of law.

DISCUSSION

Macedonia

It is not in the interests of the United States to recognize the Skopje regime under the Greek name of Macedonia for the following twenty-two reasons:

1. There is no unqualified universally accepted rule of international law that authorizes a state to name itself anything it wants.

2. The current Macedonia issue stems from the secessionist Skopje regime's naming itself in the most provocative way possible as the so-called "Republic of Macedonia" and requesting world-wide recognition.

3. President Gligorov of Skopje, Tito's protege, can end the problem overnight by reinstating the name the Skopje area had in 1944--Vardar Banovina--before Tito changed it.

4. Macedonia is a Greek name in origin. Its use in Ancient Greece as the Kingdom of Macedonia of Philip II and Alexander the Great, even then denoted a region, not a nationality. Macedonians, like Athenians, Spartans, people from Crete and Cypriots, were Greeks.

5. The northern province of Greece, which borders the Skopje regime, is Macedonia.

6. The usage of Macedonian as a nationality was an invention of Tito in 1944. Tito, the communist dictator of Yugoslavia, created a false Macedonian ethnic consciousness among his south Slavic citizens for a number of reasons, including his campaign against Greece to gain control of Greece's province of Macedonia and the main prize of the major port city of Salonika.

7. Tito changed the name of the Skopje area in 1944 from Vardar Banovina to Macedonia.

8. Skopje's actions and Greece's reactions must also be seen in the context of Moscow's and Tito's support of the Greek communists in Greece's civil war in 1946-49. Tito supplied arms, equipment and food to the Greek communists and gave them bases in the Skopje region of Yugoslavia.

9. Tito's and Stalin's actions resulted in the death of 50,000 Greeks and 685,000 were left homeless. The Skopje regime and its communist leadership were in the forefront of Tito's efforts against Greece.

10. The United States opposed the use of the name Macedonia by Tito in 1944 and we should continue to oppose it now. In a Circular Airgram (Dec. 26, 1944) Secretary of State Edward R. Stettinius, Jr., stated:

This Government considers talk of Macedonian "nation", Macedonian "Fatherland", or Macedonian "national consciousness" to be unjustified demagoguery representing no ethnic nor political reality, and sees in its present revival a possible cloak for aggressive intentions against Greece.

The approved policy of this Government is to oppose any revival of the Macedonian issue as related to Greece. (See Exhibit 1 for full text.)

11. Stettinius' airgram was prophetic because Tito and Stalin did initiate aggressive action against Greece. Macedonia was the key issue

at the time of the Truman Doctrine in 1947. United States policy was to protect the territorial integrity of Greece from a communist takeover which would have resulted in the creation by Yugoslavia of a Macedonian state in Yugoslavia from Greece's northern province of Macedonia and the control by the communists of the Aegean Sea, the Eastern Mediterranean and the encirclement of the Persian Gulf oil area.

12. Greece's defeat of the communists in the Greek Civil War (1946-49) with Greek blood and United States aid was a major turning point in post-World War II Cold War history in the containment of communism. It prevented the communists' takeover of Greece, and thereby prevented the communist domination of the Aegean Sea and the Eastern Mediterranean and the strategic encirclement of the oil resources of the Middle East, including the Persian Gulf area.

13. Greece played a key role in the Allied victory in World War II. Greece's reply of "OXI!" (No!) to Mussolini's demands for capitulation on October 28, 1940, and her defeat of Mussolini's armies compelled Hitler to divert valuable troops and equipment to Greece, thereby delaying by several weeks his invasion of the Soviet Union which was a substantial factor in preventing Hitler's defeat of the U.S.S.R. Greece's actions can be considered a turning point in that war.

14. It is not proper for a country which is part of a region to define itself in an official manner as representing the whole region. Macedonia, like the Americas, Europe, Scandinavia, and the Balkans, is a region. Just as no country in North and South America would call itself the "American Republic," and no European country would call itself the "Republic of Europe," the Skopje regime in naming itself cannot assume the mantle of all of Macedonia.

15. Skopje has mounted since 1945 a propaganda campaign against Greece claiming all of Macedonia for the so-called "Macedonian people." However, there is no such separate ethnic group. There are people speaking a Slav dialect living in the parts of Macedonia controlled by Yugoslavia and Bulgaria. Serbs say these people are Serbs, Bulgarians say they are Bulgarians. The ancient Macedonians were Greeks, as all historical and archaeological evidence demonstrates.

16. The United States must not be swayed by conciliatory statements of President Kiro Gligorov, former communist party apparatchik and Tito protege, during his visits to the U.S. which are carefully stage-managed by Hill & Knowlton, the public relations and lobbying firm which is also the registered foreign agent for Turkey.

17. While Gligorov was in the United States, Skopje's brazen propaganda campaign against Greece continued, including "commemorative" banknotes depicting the famous "White Tower" of Salonika, and the publishing of maps of "Macedonia" which encompass one-fourth of mainland Greek territory. Skopje's propaganda long precedes the breakup of Yugoslavia.

18. Paragraph 49 of the constitution of the Skopje regime still cites the status of "Macedonian" people in neighboring countries. Reuters reported (May 4, 1992) that Bulgaria, one of only two states to recognize the "Republic of Macedonia" (the other was Turkey) has announced it will not establish diplomatic relations until the European Community conditions are met. The Bulgarian Foreign Minister

specifically cited the offending paragraph 49 of the Skopje constitution which says that Macedonia "cares for the status of persons belonging to the Macedonian people in neighboring countries...and promotes links with them."

19. Names have a powerful significance. They are used for territorial claims and interference in the internal affairs of one's neighbors. This is particularly so in the Balkans.

20. Greece has no claims to the territory of the Skopje regime and would welcome trade ties and good neighbor relations, which the Skopje regime needs, if the regime changes its name. (See in general Exhibit 3, article by B.J. Cutler, foreign affairs columnist for Scripps Howard News Service, Washington Times, April 22, 1992.)

21. Recognition of the Skopje regime under the name of Macedonia will prove destabilizing for the region and harmful to United States interests. It is best to prevent a crisis rather than to have to respond to it.

22. Greece, a major United States ally in the Persian Gulf War and in this century (in WWI, WWII, in the historic defeat of the communists in 1946-49 and in Korea) has earned the full support of the United States in this matter. It is in the interests of the United States to give that support. (See Exhibit 4, article by Leslie Gelb, foreign affairs columnist for the New York Times, June 12, 1992 at A25.)

The United States in its own self-interest, and the European Community, must make it clear to Skopje that:

(1) there will be no recognition based on the name Macedonia;

(2) there will be no recognition of the new state without a formal written declaration from Skopje that it recognizes Greece's borders and has no territorial claims against Greece; and

(3) there will be no recognition without a formal commitment from Skopje that it will stop the propaganda campaign against Greece waged from Skopje since 1945.

Cyprus

It is not in the interests of the United States to give aid to Turkey for the following twenty-one reasons, each of which is reason enough to halt all military and economic aid to Turkey, and several of which justify immediate economic sanctions against Turkey:

1. Turkey's abduction of five Americans at gunpoint in 1974 and its refusal to release or account for them.

There is credible evidence that one of the five, Andrew Kassapis of Detroit, Michigan, was killed by Turkish forces. Kassapis' kidnapping with another person at gunpoint by the Turkish forces/Turkish Cypriot militia was witnessed by his parents and others. Ambassador Nelson Ledsky, the United States Special Coordinator for Cyprus, in his testimony on April 17, 1991, before the Senate Foreign Relations Subcommittee on European Affairs stated that Raul Denktash, the Turkish

Cypriot leader, told him "only yesterday at lunch" that he "has personally looked into this situation and he could - he did assure the family that this boy was not alive and died in the first few days of fighting in July 1974." (Cyprus: International Law and the Prospects for Settlement, Hearing before the Senate Foreign Relations Subcommittee on European Affairs, 102nd Cong., 1st Sess. 16 (1991))

The evidence is clear. The reasoning is obvious-the boy was in the custody of Turkish forces and if he was killed in the first few days of fighting, he was killed by Turkish forces.

We have called for an investigation of the matter and an investigation of the fate of the other four Americans taken at gunpoint by the Turks in 1974.

2. The taking of property owned by American citizens in the Turkish occupied territory by Turkish forces and the illegal Turkish Cypriot regime, headed by Rauf Denktash, and the illegal use of the property for illegal gains. I would estimate that there are several hundred Americans whose property has been illegally taken.

3. The end of the Cold War.

4. The demise of the Warsaw Pact.

5. The demise of communism in the former U.S.S.R.

6. The breakup of the U.S.S.R.

7. The lack of any meaningful threat to Turkey.

What is the threat to Turkey that requires massive U.S. military aid? It makes no sense for the U.S. to continue to send huge amounts of military aid to Turkey with the end of the Cold War, the demise of the Warsaw Pact, the reduction of forces in the United States, NATO and the former U.S.S.R., and our huge budget deficit and enormous domestic needs. Arms aid to Turkey should be ended now.

In fiscal 1991 Turkey received nearly a billion dollars in U.S. aid, not including excess defense articles sent to Turkey. Desert Storm equipment and weapons left in Turkey by Germany and surplus weapons sent since the war amounted to another billion and a half dollars.

8. Turkey's numerous violations of law stemming from its invasion of Cyprus in 1974, which violations continue to date:

a. the United Nations Charter preamble "that armed force shall not be used, save in the common interest" and article 2 paragraph 4 which states that "all members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the purposes of the United Nations." UN Charter article 2(4) is the provision Iraq violated by its invasion of Kuwait.

b. the North Atlantic Treaty article 1 which states that "the Parties undertake...to refrain in their international relations from the

threat or use of force in any manner inconsistent with the purpose of the United Nations";

c. the human rights sections 116 and 502B of the Foreign Assistance Act of 1961, as amended, by its actions in Cyprus, a number of which are continuing and substantial, and the arms sections of that Act and the Foreign Military Sales Act;

d. the European Convention on Human Rights (1950);

The European Commission on Human Rights, in its report dated July 10, 1976 regarding two complaints filed by the Cyprus Government, found Turkey guilty of violating the following articles of the European Convention on Human Rights by its actions in Cyprus:

- (1) Article 2-by killings of innocent civilians committed on a substantial scale;
- (2) Article 3-by rapes of women of all ages from 12 to 71;
- (3) Article 3-by inhuman treatment of prisoners and persons detained;
- (4) Article 5-by deprivation of liberty with regard to detainees and missing persons-a continuing violation; In addition to the 5 Americans taken by the Turks, there are 1,614 missing Greek Cypriots out of a total of 570,000 Greek Cypriots.
- (5) Article 8-by displacement of persons, creating more than 170,000 Greek Cypriot refugees, and by refusing to allow the refugees to return to their homes-a continuing violation;
- (6) Article 1 of the First Protocol to the Convention -by deprivation of possessions, looting and robbery on an extensive scale.

The London Sunday Times published excerpts of the report and stated: "It amounts to a massive indictment of the Ankara government for the murder, rape and looting by its army in Cyprus during and after the Turkish invasion of summer 1974." (London Sunday Times, Jan. 23, 1977).

Turkey, by its actions in Cyprus, is in violation of the human rights sections 116 and 502B of the Foreign Assistance Act of 1961, which violations of internationally recognized human rights continue to date.

In a second report dated 1983 regarding a third complaint which was released on April 3, 1992 after nine years of delaying tactics by Turkey, the European Commission on Human Rights again found Turkey guilty of continuing violations of Articles 5 and 8 and Article 1 of Protocol No. 1 of the European Convention.

e. the United Nations Universal Declaration of Human Rights (1948). Violations of the European Declaration on Human Rights also constitute

violations of the comparable articles of the Universal Declaration of Human Rights;

f. the fourth Geneva Convention of 1949 regarding protection of civilians states in section III, article 49 that the occupying power shall not transfer or transport persons from their own country to the occupied territory. There are today an estimated 80,000 illegal colonists/settlers from Turkey in the occupied part of Cyprus.

g. Protocol I to the fourth Geneva Convention of 1949, part V, article 85, also prohibits the transfer of persons from the occupying powers country to the occupied territory; and

h. Article IV of the Treaty of Guarantee under the London-Zurich Agreement of 1959-60. That Treaty did not authorize the use of force. If the word "action" in Article IV is to be interpreted as authorizing force, then that article is void ab initio under article 103 of the UN Charter as contrary to the Charter. (See David Hunt, "Cyprus: A Study in International Relations" 11 (1980), the Montague Burton Lecture in the University of Edinburgh. Hunt was Britain's High Commissioner in Cyprus from 1965 to 1966; see also Rossides, "Cyprus and the Rule of Law," 17 Syracuse Journal of International Law and Commerce 21, at pp.55-60 (1991), (hereinafter "Cyprus and the Rule of Law")).

Turkey's violations of law are extensively discussed and documented in my article, "Cyprus and the Rule of Law."

No one in the State and Defense Departments wants to talk of these violations of law by Turkey which are more extensive than the violations of law by Iraq in its invasion of Kuwait. The double standard for Turkey must end.

The Cyprus issue is one of aggression and land grab through brute force by Turkey in violation of the UN Charter and international law. It is not a question of minority rights. The substantive proposals made over the years by the Greek Cypriots encompass the language of the Universal Declarations of Human Rights and the European Convention on Human Rights. Protection of minority rights can also be aided by allowing for appeal to outside forces including the United Nations. Turkey and Denktash have used this issue to create an excuse for their apartheid and partition policies.

9. Turkey's human rights violations against its own citizens generally and in particular against its 12 million Kurdish citizens who constitute a 20% minority. (See the recent Freedom House Annual Survey for 1991, the Human Rights Watch Report released in January, 1992, the Humanitarian Law Project Report, "The Current Conflict Between Turkish Armed Forces and the Kurds of Southeast Anatolia," July 17, 1991, the Helsinki Watch Report, "Denying Human Rights and Ethnic Identity- The Greeks in Turkey," March 1992, the Report of the Association of the Bar of the City of New York on "Torture in Turkey: The Legal System's Response," 45 Record 6-131, 1990, and the several Amnesty International reports on Turkey. Also see "Cyprus and the Rule of Law" footnote 122, page 62.

Turkey seeks equal voting status for the 18% Turkish Cypriot minority while denying basic human rights to its 20% Kurdish minority.

Germany halted for a period of time all military aid to Turkey because of Turkish armed attacks including air strikes on the Kurds in Turkey and in Iraq utilizing in part German military equipment. The United States did not follow Germany's lead. The State Department spokesperson actually commended the Turks. (See Spokesperson Margaret Tutwiler press briefings, March 25 and 26, 1992.)

The New York Times in an editorial (April 1, 1992) stated that "Turkish Kurds have been subject to systematic human rights violations, including torture." The editorial also stated that: "The international community is...morally bound to demand that...Ankara cease [its] ugly repression of Kurdish civilians before its becomes genocide."

10. Since money is fungible, United States aid subsidizes the cost to Turkey of (a) Turkey's illegal occupation of almost 40% of Cyprus, (b) the several foreign agents Turkey employs in the United States for over \$3.6 million annually according to Department of Justice records (including Hill and Knowlton at \$1.1 million and International Advisors, Inc., at \$.8 million), (c) and part of the costs of Turkey's 125,000 Army of the Aegean aimed at Greece's Aegean Islands, and (d) part of the costs of the Turkish military which is used to suppress Turkey's Kurdish minority.

11. Turkey has failed to negotiate in good faith a Cyprus settlement as required by the amendment lifting the remaining partial embargo in 1978. The provisions of the original embargo should therefore be implemented against Turkey. In 1974 Turkey violated Section 505(d) of the Foreign Assistance Act of 1961, as amended, and Section 3(c) of the Foreign Military Sales Act, by the misuse of United States-supplied arms for its aggression in Cyprus; see Comptroller General's opinion letter of October 7, 1974; 120 Cong. Rec. 34,672 (1974) and the several congressional debates from September through December, 1974; Lawrence Stern, The Wrong Horse 149 (1977).

Turkey and the Turkish Cypriots have failed to submit, as promised, negotiating proposals regarding territory, constitutional arrangements and refugees since 1977. Only last year on September 11, 1991, in Paris the Turkish Prime Minister reneged on understandings that had been conveyed to the UN Secretary General and the State Department and scuttled plans for an international conference favored by the United States.

12. United States intelligence facilities in Turkey are, and have been for many years, unnecessary and duplicative of other superior listening posts and satellites. For many years we have called for their closing. Several were closed last year and it was recently announced that five more such facilities in Turkey would be closed. The remaining ones should also be closed and the estimated 4,000 remaining American troops should be brought home. It is a waste of U.S. taxpayer dollars to keep any listening facilities open in Turkey and American troops there. (See "Cyprus and the Rule of Law," page 79 footnote 187.)

13. Turkey is an unreliable ally who aided the former U.S.S.R. militarily. Example's of Turkey's unreliability are set forth in "Cyprus and the Rule of Law," page 79, footnote 187. Turkey also

refused to cosponsor the United States initiative in the UN to revoke the infamous resolution equating Zionism with racism and abstained on the vote.

14. The Persian Gulf War demonstrated that Greece, not Turkey, is the strategic key to the projection of United States power in the Eastern Mediterranean and Persian Gulf. The NATO naval base in Suda Bay, Crete, is the key base for the projection of United States power in the Eastern Mediterranean and the Persian Gulf through the Sixth Fleet. Suda Bay is also the site of the key U.S. Air Force base for the projection of U.S. air power in the Eastern Mediterranean. The NATO naval base and the U.S. Air Force base at Suda Bay are each far more important to U.S. strategic interests than all the listening posts and bases in Turkey put together. President Bush recognized the importance of Suda Bay by his historic visit to the Suda Bay bases in July, 1991.

Turkey sat on the sidelines throughout Desert Shield, refusing to send any forces to the U.S.-led Coalition, refusing to authorize a second land front from Turkey (see Wash. Post, Jan. 16, 1991, at A6, col. 5), and refusing to allow the use of the NATO airbase at Incirlik, Turkey.

Desert Storm began on January 16, 1991. It was not until over 24 hours after the air war had begun on January 16, 1991, and only after the Iraqi air force and air defenses had been neutralized and the U.S. had achieved air superiority, that Turkey allowed a limited number of sorties out of the Incirlik NATO air base. Only one out of twenty coalition sorties originated in Turkey, and these were clearly unnecessary. The Turkish military and Turkish public opinion opposed the use of Incirlik NATO air base.

Regarding the two oil pipelines from Iraq through Turkey to the Mediterranean coast, Iraq, not Turkey, closed the first oil pipeline and reduced the flow of oil through the second by 75 percent for lack of customers. Turkey refused to act to shut off the second pipeline until after the U.N. Security Council passed resolution 661 on August 6, 1990 (Wash. Post, Aug. 8, 1990, at A12, col.4). Other countries acted right away.

Further, we did not need Turkey to halt the remaining 25% of the second pipeline since the naval blockage would have prevented any movement of Iraqi oil from Turkey's Mediterranean port if there had been any customers. Turkey's President Ozal admitted this in a news conference on June 7, 1991 in Istanbul when he stated: "If Turkey had not imposed an embargo and shut the pipeline it would have led to a blockade." (Associated Press, June 7, 1991.)

Turkey had no choice but to close the remaining pipeline once the Security Council acted. Otherwise, she would have been in violation of Security Council Resolution 661 and Article 25 of the United Nations Charter, which requires member states to comply with Security Council resolutions. By failing to implement S.C. Res. 661, Turkey would have jeopardized her relations with the rest of the nations who supported S.C. Res. 661, including the U.S., and the significant economic relations and aid from the U.S., other countries, and international organizations.

Turkey's proponents stress that Turkey closed its 206-mile border with Iraq. In reality, the border was never fully closed. There was large-scale, openly organized smuggling along the Turkey-Iraq border. (See Turkish daily newspapers, Sabah, Sept. 3, 1990, and Cumhuriyet, Sept. 22, 1990, and the weekly magazine, Yuzil, Sept.. 9, 1990; See Wall Street Journal, Oct. 30, 1990, at 1, col. 1)

Turkey's proponents also assert that Turkish troops "tied down" 100,000 Iraqi forces. Again, the reality is otherwise. The Iraqi troops were stationed along the Syrian and Turkish borders in Northern Iraq before the invasion of Kuwait and Iraq had no plans to move them south. Those troops had to be kept there in order to control the Kurds and check the Syrians.

While Turkey delayed support for the U.S. initiated freeze on commercial dealings with Iraq and negotiated for compensation, and sat of the sidelines throughout Desert Shield (Aug. 2, 1990-Jan. 16, 1991) the Mitsotakis government of Greece gave full support to Desert Shield/Desert Storm. Greece:

- (1) immediately condemned Iraq's aggression;
- (2) authorized from the first day of the crisis the use of the Suda Bay naval base to provide operational, logistical and command support for the U.S. Sixth Fleet 24 hours a day;
- (3) authorized the use of the U.S. air base at Suda bay to provide similar support to the U.S. Air Force in the build up of U.S. air power in Saudi Arabia and other Persian Gulf countries;
- (4) authorized military overflights and base access generally (the extraordinary number of over thirty-two thousand (32,000) military overflights of Greece occurred during Desert Shield/Desert Storm);
- (5) joined the coalition forces and sent two naval frigates to the Persian Gulf; and offered air combat patrols and medical facilities.

The Greek merchant marine played a substantial role in the movement of cargo to the Persian Gulf for the U.S. and allied forces. The Greek merchant marine is an important asset for U.S. and NATO interests that is often overlooked in considering the relative strategic and military values of Greece and Turkey.

15. Operation Desert Shield/Desert Storm demonstrated that Turkey is fundamentally irrelevant for protecting the oil resources in the Persian Gulf and of little value for U.S. national security interests in the present post-Cold War, post-Persian Gulf era.

The war proved that what is necessary for the protection of oil resources in the Persian Gulf is:

- (1) the cooperation of the Gulf states with the U.S. by authorizing U.S. air and land bases in those countries, not in Turkey;
- (2) the use of NATO naval and U.S. air bases at Suda Bay, Crete;
- (3) the use of the British bases in Cyprus; and

(4) the use of the U.S. naval base and facilities in Diego Garcia in the Indian Ocean.

David C. Morrison, in a comprehensive article, discusses in detail the U.S. base facilities in the Persian Gulf countries. (See National Journal, March 23, 1991, at 675.)

16. Turkey's foreign agents now try to justify aid by saying Turkey can be influential regarding the new southern republics of the former U.S.S.R. That argument is irrelevant on the question of aid to Turkey. Turkey will pursue its interests regarding these new nations with or without U.S. aid. Secondly, the U.S. does not need an intermediary with these new nations. Thirdly we do not need to create a new Ottoman Empire in that region or build up another potential Khomeini or Hussein.

The idea that Turkey could serve as a model for the former Soviet Republics in Central Asia is not shared by area specialists. Barnett Rubin, Director of Columbia University's Center for the Study of Central Asia, states that:

the main obstacle to intelligent policy making in Central Asia is the repetition of the cold war pattern of looking for a threat and for a partner against that threat--and then finding that the partner has a regional agenda that isn't yours....At the moment, the new threat perception is some kind of Iranian fundamentalism and our partner is so-called secular Turkey....I think that the Central Asian nations are not going to be the passive recipients of somebody else's models. (N.Y. Times, May 31, 1992)

Another Columbia center professor, Edward Allworth, said that making Turkey the model was a "simple-minded solution to a very complex problem." (Ibid)

Senator Dennis DeConcini (D-AZ) has praised Secretary Baker for opening embassies in the Central Asian republics but "he is concerned that Washington is listening too closely to fears of Islamic revivalism voiced for political reasons by old-guard communists still in power in several states." He "is also critical of the Administration's decision to meet the threat of Islamic militancy through a policy of encouraging Turkey as a model for Central Asia." Senator DeConcini stated: "Turkey has immense problems, including in human rights." (N.Y. Times, May 31, 1992)

Actually, pan-Turkism is a regional threat. Shireen T. Hunter, Deputy Director of Middle East Studies at the Center for Strategic and International Studies, states that a major regional "phenomenon is the reemergence of extreme and potentially irredentist and expansionist nationalisms, most notably pan-Turkism." Hunter adds:

If continued unchecked, or worse, if consciously or unconsciously encouraged by Western policies devised for the expediency of the moment, such ideas could become sure recipes for regional conflicts. (15 Washington Quarterly No. 3, page 38, 1992)

Turkey's continuing human rights violations against its Kurdish and Greek minorities in Turkey and its aggression in and occupation of almost 40% of Cyprus does not qualify it to be promoted as a model for any new nation in Central Asia.

17. Cyprus, through the use of the British bases in the British Sovereign Base Areas in Cyprus, the granting of overflight rights, base access and transit assistance, was more important to the success of Desert Shield/Desert Storm than Turkey.

Cyprus provided substantial support for Desert Shield/Desert Storm. Cyprus gave immediate and strong support for the U.S. condemnation of Iraqi aggression and gave full and strong support for all of the United Nations resolutions on Iraq.

Cyprus authorized military overflight, transit assistance and base access. United States and allied planes used Cyprus airports for flights related to the war effort.

The British bases in the British Sovereign Base Areas provided operational, logistical, communications, and command support for British and allied forces from August 2, 1990 on a 24-hour-a-day basis, and were and are more useful than all of the bases in Turkey.

Cyprus played an important role at a meeting of the foreign ministers of non-aligned nations in Belgrade, Yugoslavia on February 12, 1991, in blocking a resolution that criticized the manner in which the United States was conducting the Desert Storm war.

The Cyprus merchant marine played a substantial role in the movement of cargo to the Persian Gulf for the coalition forces.

18. The Iraq/Kuwait precedent should be applied to Turkey/Cyprus. There is no legal difference between Iraq's aggression against Kuwait and Turkey's aggression against Cyprus and the factual situation is remarkably similar. The key factual difference is that Kuwait has oil and Cyprus does not.

As a matter of law, Iraq/Kuwait and Turkey/Cyprus are the same. Both Iraq and Turkey violated the United Nations Charter article 2(4) which prohibits the use of threat of force to settle differences. Turkey's aggression has been compounded over an eighteen-year period, a fact which should weigh heavily against Turkey.

Cyprus is the acid test of the New World Order. Will we apply the rule of law to friend and opponent alike or will we continue the double standard for and appeasement of Turkey?

Failure to apply the rule of law to Turkey as it was applied to Iraq would give credence to the charge that the Persian Gulf War was solely for access to Persian Gulf oil.

Enforcing the United Nations Charter provisions and General Assembly and Security Council resolutions on Cyprus against Turkey would demonstrate that the era of a double standard on the rule of law and aggression for enaid048 (UNTS-16457) DocId:70106680 page 20 is over. It would add the important ingredient of credibility to our efforts in the Persian Gulf for a New World Order.

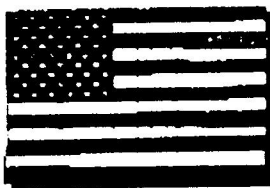
The precedent value for the rule of law in international affairs, added to the Iraq/Kuwait precedent, would be highly significant.

19. The United States, through the actions of the then Secretary of State Henry Kissinger, bears a major responsibility for the tragic events of 1974. The New York Times in 1974 characterized Kissinger's policy as having "encouraged Turkey to intervene on the island" and a "illegal appeasement of Turkish aggression." (New York Times, Sept. 14, at 28, col. 1)

20. Our huge budget deficit is reason enough not to give Turkey 621.5 million of our tax dollars.

21. Our enormous domestic needs should obviously take precedence over a \$621.5 million giveaway to Turkey.

Thank you.



U.S. STATE DEPARTMENT

Foreign Relations, Vol. VIII
Washington D.C.

Circular Airgram
(868.014 / 26 Dec. 1944)

The Secretary of State to Certain Diplomatic and Consular Officers

The following is for your information and general guidance, but not for any positive action at this time.

The Department has noted with considerable apprehension increasing propaganda rumors and semi-official statements in favor of an autonomous Macedonia, emanating principally from Bulgaria, but also from Yugoslav Partisan and other sources, with the implication that Greek territory would be included in the projected state. "This Government considers talk of Macedonian "nation", Macedonian "Fatherland", or Macedonian "national consciousness" to be unjustified demagoguery representing no ethnic nor political reality, and sees in its present revival a possible cloak for aggressive intentions against Greece".

The approved policy of this Government is to oppose any revival of the Macedonian issue as related to Greece. The Greek section of Macedonia is largely inhabited by Greeks, and the Greek people are almost unanimously opposed to the creation of a Macedonian state. Allegations of serious Greek participation in any such agitation can be assumed to be false. This Government would regard as responsible any Government or group of Governments tolerating or encouraging menacing or aggressive acts of "Macedonian forces" against Greece.

The Department would appreciate any information pertinent to this subject which may come to your attention.

STETTINIUS

EXHIBIT 2

Initiators and Cosponsors of H.R. 4399

Bill Green (R-NY)	William Hughes (D-NJ)
Bob Mrazek (D-NY)	Jim Jontz (D-IN)
Nancy Pelosi (D-CA)	Marcy Kaptur (D-OH)
Thomas Andrews (D-ME)	Joseph Kennedy (D-MA)
Douglass Applegate (D-OH)	Mike Kopetski (D-OR)
Chester Atkins (D-MA)	Martin Lancaster (D-NC)
Les AuCoin (D-OR)	Tom Lantos (D-CA)
Helen Bentley (R-MD)	Richard Lehman (D-CA)
Michael Bilirakis (R-FL)	Thomas Manton (D-NY)
David Bonior (D-MI)	Robert Matsui (D-CA)
Barbara Boxer (D-CA)	George Miller (D-CA)
Albert Bustamante (D-TX)	Michael McNulty (D-NY)
William Coyne (D-PA)	Stephen Neal (D-NC)
Ronald Dellums (D-CA)	Frank Fallone (D-NJ)
Tom Downey (D-NY)	John Porter (R-IL)
Joseph Early (D-MA)	Arthur Ravenel (R-SC)
Ben Erdreich (D-AL)	Don Ritter (R-PA)
Vic Fazio (D-CA)	Edward Roybal (D-CA)
Edward Feighan (D-OH)	Jose Serrano (D-NY)
Hamilton Fish (R-NY)	Pete Stark (D-CA)
Dean Gallo (R-NJ)	Edolphus Towns (D-NY)
George Gekas (R-PA)	James Traficant (D-OH)
Benjamin Gilman (R-NY)	Jolene Unsoeld (D-WA)
Frank Guarini (D-NJ)	Howard Wolpe (D-MI)
Tony Hall (D-OH)	Ron Wyden (D-OR)
Paul Henry (R-MI)	Bill Zelif (R-NH)
Joan Kelly Horn (D-MO)	

B.J. CUTLER

WASHINGTON TIMES 4-22-92

Little Macedonia's big identity crisis

FOIA # 60048 (URIS 16457) DocId: 70106680 Page 24

NARA-18-1003-A-002737

A tiny part of former Yugoslavia has declared itself an independent nation in a desperate (and possibly futile) move to prevent its seizure by covetous neighbors.

The United States and the 12-member European Community want to recognize the new country, hoping to give it international protection and to foster stability in the uneasy Balkans.

But they cannot exchange diplomats with it because of its name: Macedonia. Greece, a member of the EC and a U.S. ally, refuses to allow the name to be used by a non-Greek territory.

Athens, heatedly backed by a majority of its citizens, insists that Macedonia has been part of Greek history for 3,500 years and the home of some of its greatest sons: Alexander the Great; his father, Philip of Macedon; and Alexander's teacher, Aristotle.

Greece also suspects that by calling itself Macedonia, the bit of ex-

Yugoslavia is making an implied claim to Greece's northernmost province, also named Macedonia.

At first glance, it seems ridiculous for Greece, with 10 million people, a modern army and the safety of membership in NATO, to fear dirt-poor Macedonia, which has a population 2.3 million and no armed forces.

But that southernmost piece of collapsed Yugoslavia has a remarkable record of touching off warfare. In recent history it has been ruled by Serbian overlords, Ottoman Turks, Bulgarian allies of Nazi Germany and expansionist communists.

The territory has been claimed by Albania, Bulgaria, Greece and Serbia, which fought two nasty Balkan wars over it early in this century. Some of those claims still lurk beneath the surface.

Greeks painfully recall that Marshal Tito, Yugoslavia's communist dictator, created the "Republic of Macedonia" in 1945 as part of a greater ambition: To reconstitute Alexander's Macedonia, under Tito's rule, by annexing parts of Greece and Bulgaria.

Tito especially had his eye on Sa-



lonika, Greece's second largest city, which would have given his dream Yugoslav empire a port on the Aegean Sea.

In pursuit of a "Greater Macedonia," Tito gave Greek communists bases in his country from which they directed the vicious Greek civil war of 1946-49. The Greek government won, with help from President Truman, but at a terrible price: more than 100,000 dead, 685,000 homeless, vast devastation.

American and European diplomats are irritated with Greece's obstruction of their desire to recognize Macedonia. They did not, however, live through the horrors of the civil war and should be more sensitive to the concerns of those who did.

Fortunately, Greece has no claims to the territory of Macedonia and is willing to have trade ties and good neighborly relations — if the entity will just change its name.

So far, the authorities in Скопје, the capital, reject Greece's demand. They are short-sighted, for Serbia and not Athens should be their main worry.

Between the two world wars, Belgrade ruled Macedonia as "southern Serbia." Today's Serbia, under hard-line communist Slobodan Milosevic, has emerged as the bully of the Balkans. After it finishes dismembering the old Yugoslav republics of Croatia and Bosnia, it may move on Macedonia, whose independence it opposed.

When and if that happens, the ethnic Albanians, Gypsies, Slavs and Turks who call themselves Macedonians will need all the friends they can get. It would be tragic if, because of a name, they found themselves isolated and helpless.

B.J. Cutler is foreign affairs columnist for Scripps Howard News Service.

'Macedonia' for Greece

ATHENS

What's in a name? Ghosts or real historical demons. Perhaps war or peace. Nothing and everything.

The name in question is Macedonia, birthplace of Alexander the Great and Aristotle. Some 1.9 million souls who used to constitute a republic within Yugoslavia now insist they must have that name for their newly independent state. Greece, with its own province of Macedonia, says it will recognize the new state, with its capital of Skopje — but only if "Macedonia" appears nowhere in its name.

Athens deserves U.S. support.

From the Balkan wars of 1913 to the Greek civil war of 1946 to 1949, when Greek and Macedonian Communists tried to unite the two Macedonias into Yugoslavia, tens of thousands have died over this obscure pinch of land. And over this issue today, Greece is united as it has rarely been throughout what Greeks here call their 2,500 years of democracy.

This history and situation would be quite unremarkable save for one very curious occurrence: Most West European nations and the U.S. are not supporting Greece in the matter. That fence-sitting is curious, even mysterious, because the West has every incentive to back reform-minded Prime Minister Constantine Mitsotakis — whose two-seat majority in Parliament surely will collapse unless he can bring the Macedonian issue to a successful conclusion.

The question of Western neutrality and even quiet opposition saturates newspapers, television and daily conversation in this low-slung, white city on the Aegean.

The conservative Mr. Mitsotakis is the most pro-American Greek leader in a very long time. He consummated a controversial naval base agreement with the U.S. He recognized Israel and got tough on terrorism. Surprisingly, he delivered Greek help for the war against Iraq. He has the full weight of the powerful Greek-American lobby behind him, a lobby with close ties to President Bush. Not least, the alternatives to Mr. Mitsotakis are the ultra-right-wing Neo-Fascists and the ultra-left-wing Neo-Communists.

The 12-nation European Communi-

ty, of which Greece is a member, also has strong reasons for helping Mr. Mitsotakis out. Greece has become the poorest E.C. nation, a basket case constantly in need of E.C. economic aid. And though E.C. leaders feel that this gentle Prime Minister has not gone far or fast enough in making reforms, they greatly prefer him to Andreas Papandreou, his old and bitter Socialist rival.

Mr. Mitsotakis does not have a good explanation for his plight either. "Perhaps Greece didn't provide enough historical information soon enough to the West" before their positions were staked out, he said in an interview in his office, sitting behind his desk flanked by the Greek and E.C. flags with tables adorned by proud pictures of his extensive family.

He recalled that months ago he offered compromise names like Slav-Macedonia, only to be rebuffed by Skopje and Greek politicians and ignored by the West. Pressed for further explanations, he responded: "I would prefer not to explain."

In the Balkans, answers are always elusive. Perhaps the West does not like the friendly relationship between Mr. Mitsotakis and President Slobodan Milosevic of Serbia. Though the Greek fully supports E.C. sanctions against Serbia. Perhaps the West fears the two will divide Yugo-Macedonia between them. Though it is now known that Mr. Mitsotakis rejected just such a Milosevic offer. Perhaps the West thinks of Skopje as a democracy. Though it is run by a bunch of Communists who still look to Serbia. Perhaps the West reckons that independence for Skopje can work only if it has the name Macedonia. Though these "Macedonians" are mostly Slavs, and though Macedonia is largely a geographical expression and not a tribal reality. Perhaps Britain and Turkey are secretly conspiring against Greece, as many Greeks darkly suggest.

Or maybe the explanation for Western neutrality is tragically simple — Greece no longer counts. Once at the center of Western civilization, it now seems a backwater.

But such a judgment would be shortsighted. Greece is the one true democracy in the Balkans. And it is led by a man trying to rid the Greek economy of bureaucratic Socialism and who is also working with Turkey toward a solution of the long-festering Cyprus problem. These are not prospects to throw away over a name. Let the West tell Skopje to be a NATO member and let "Macedonia" be Greek. □

EXHIBIT 4

NEW YORK TIMES

JUNE 12, 1992

PAGE A25

DEPARTMENT OF JUSTICE
EXECUTIVE SECRETARIAT CONTROL DATA SHEET

From: ROSSIDES, EUGENE T., AMERICAN HELLENIC INSTITUTE, INC., DC
To: PRESIDENT GEORGE BUSH (CC: AG.) ODD: NONE
Date Received: 01-17-92 Date Due: NONE Control #: X92011700818
Subject & Date
01-15-92 LETTER (COPY) REGARDING FY 1992-1993 FOREIGN AID
BUDGET PROPOSALS. STATES THAT DUE TO THE BUDGET DEFICIT
AND DOMESTIC ECONOMIC NEEDS, THE U.S. SHOULD HALT ALL
MILITARY AND ECONOMIC AID TO TURKEY. LISTS A NUMBER OF
REASONS AS TO WHY CONTINUING TO GIVE AID TO TURKEY IS
UNREASONABLE AND NOT IN THE BEST INTERESTS OF THE U.S.

	Referred To:	Date:		Referred To:	Date:	
(1)	OAG;	01-17-92	(5)			W/IN:
(2)			(6)			
(3)			(7)			PRTY:
(4)			(8)			1Z
	INTERIM BY:			DATE:		OPR:
	Sig. For:	NONE		Date Released:		MAU

Remarks
INFO CC: DAG, OIA.
(1) FOR INFORMATION.

Other Remarks:

GRG 01-17-92
FILE: INSTITUTES/AMERICAN HELLENIC INSTITUTE

REMOVE THIS CONTROL SHEET PRIOR TO FILING AND DISPOSE OF APPROPRIATELY



AMERICAN HELLENIC INSTITUTE, INC.

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January 15, 1992

'92 JAN 17 AIO:40

EXECUTIVE SECRETARIAT

The Honorable
George Bush
The White House
Washington, D.C. 20050

Re: Fiscal Year 1992-1993 Foreign Aid Budget Proposals

Dear Mr. President:

Our huge budget deficit and our enormous domestic economic needs each are reasons to halt all military and economic aid to Turkey. \$700,000,000 of unnecessary grant aid can be saved overnight by such a policy decision without any lessening whatsoever of our national security.

For the following reasons, in addition to our budget deficit and domestic economic needs, continuing to give massive aid to Turkey is unreasonable and not in the best interests of the United States:

- * the end of the Cold War;
- * the end of the Warsaw Pact;
- * the demise of communism in the former U.S.S.R. and the breakup of the U.S.S.R.;
- * the lack of any threat to Turkey;
- * Turkey's violations of law: the U.N. Charter (preamble and article 2(4)), the North Atlantic Treaty (preamble and article 1), the U.S. Foreign Assistance Act of 1961, as amended (the arms and human rights sections), the London - Zurich Treaty of Guarantee, the Geneva Convention of 1949 (section III, article 49), the European Convention on Human Rights (several sections), and the U.N. Universal Declaration of Human Rights (several sections); (See my article "Cyprus and the Rule of Law," 17 Syracuse Journal of International Law and Commerce 21 (1991), previously sent to you);
- * Turkey's continuing occupation of almost 40% (37.3%) of Cyprus with 35,000 troops and 80,000 illegal colonists;

- * Since money is fungible our \$700,000,000 in aid pays for the entire cost to Turkey of its illegal occupation army and settlers in Cyprus and the illegal Denktash regime;
- * Turkey's human rights violations against its citizens generally and in particular against its Kurdish citizens;
- * Turkey's human rights violations in Cyprus and the destruction of Cyprus' cultural heritage in the Turkish occupied part of Cyprus;
- * Turkey's threats against Greece in the Aegean and Western Thrace;
- * Turkey's failure to negotiate in good faith a Cyprus settlement as required by the Foreign Assistance Act of 1961 as amended (and successive acts);
- * the Persian Gulf War demonstrated (1) the lack of importance of Turkey for U.S. security interests in access to Persian Gulf oil, and (2) that Greece, not Turkey, is the strategic key to the projection of U.S. power in the Eastern Mediterranean and the Persian Gulf through the U.S. Sixth Fleet and the U.S. Air Force. The Suda Bay NATO Naval Base in Crete and the U.S. Air Force Base at Suda Bay operated 24 hours a day from August 2, 1991 in support of the U.S. led effort. (See my testimony of June 25, 1991 before the Senate Appropriation Subcommittee on Foreign Operations, previously sent to you);
- * Turkey's "aid windfall from the Gulf War" of 1.79 billion dollars, which cut Turkey's "budget deficit by 20 per cent." (Financial Times, Nov. 27, 1991, page 2, col. 8.) Turkey also received an estimated one billion dollars in war materiel from Germany during the Persian Gulf War;
- * our 25% defense reductions;
- * NATO's 25% to 50% defense reductions; and
- * U.S. intelligence facilities in Turkey are, and have been for many years, unnecessary and duplicative of superior satellite and other listening posts.

The Washington Post in its lead story (Jan. 3, 1992, A1:5) reported that you are "considering new reductions in defense spending...so that funds earmarked for defense can be shifted to domestic spending or tax cuts." In addition to the \$700,000,000 savings in foreign aid to Turkey, additional millions in savings are available from the closing of the unnecessary and duplicative U.S. intelligence facilities in Turkey, and the return home of the several thousand U.S. personnel involved.

Stopping aid to Turkey and closing our intelligence facilities in Turkey will also advance (1) your Middle East arms control initiative launched in May, 1991, "to control and reduce destabilizing arms flows in the region," and (2) the Cyprus policy you enunciated on July 7, 1988, during the presidential campaign, namely:

"We seek for Cyprus a constitutional democracy based on majority rule, the rule of law, and the protection of minority rights....I want to see a democratic Cyprus free from any threat of war."

The arms buildup in Turkey is harmful to all concerned - the Turkish people, the Greek people and the Cypriots. The Turkish military, diplomatic and political oligarchy have for decades played off the East and West against each other and profited from both.

Military aid to Greece should continue at the same level as fiscal year 1991-1992 until Turkey removes its 35,000 illegal occupation troops and 80,000 illegal colonists from Cyprus and disbands its Army of the Aegean aimed at Greece. Turkey is, and has been for years, the main threat to the security of Greece.

Greece's role as a stable democracy in the volatile Balkans is a further consideration in continuing aid to Greece.

We urge you to reject the advice of career foreign service officers in the State Department and career Defense Department officials who do not support (1) the application of the rule of law to Turkey's aggression in Cyprus as it was applied to Iraq's aggression against Kuwait, (2) "a constitutional arrangement based on majority rule, the rule of law, and the protection of minority rights" for Cyprus, and (3) a halt in aid to Turkey. (See my letters to you of Sept. 20 and Nov. 5, 1991, and a copy of my letter of Jan. 6, 1992 to David M. Ransom, Director, Office of Southern European Affairs, State Department, sent to you.)

As a matter of law Turkey is ineligible for foreign aid because of (1) its continuing and substantial human rights violations (see, for example, the recent Freedom House Annual Survey and the Human Rights Watch report), and (2) its failure to negotiate in good faith, a Cyprus settlement. An argument can also be made that Turkey is ineligible for U.S. aid because of its continuing violations of the United Nations Charter and the North Atlantic Treaty by its invasion and occupation of part of Cyprus.

The United States should also be considering economic sanctions against Turkey, similar to those used against South Africa, and economic sanctions by the United Nations Security Council.

Mr. President, we ask you to save \$700,000,000 and to apply the rule of law uniformly. Applying the Iraq/Kuwait precedent to Turkey will prove that appeasement and the era of a double standard on the rule of law and aggression for an ally are over. It will prove that the Persian Gulf War was not fought solely for access to Persian Gulf oil but was fought also for a New World Order based on the rule of law.

Respectfully,


Eugene T. Rossides

cc: The Honorable James A. Baker III, Secretary of State
The Honorable Dick Cheney, Secretary of Defense
The Honorable Nicholas Brady, Secretary of the Treasury
The Honorable William P. Barr, Attorney General
The Honorable Samuel Skinner, Chief of Staff

The Honorable Richard G. Darman, Director, Office of Management and Budget
Robert E. Howard, Associate Director, Office of Management and Budget
Daniel Cantu, Budget Examiner (ESF), Office of Management and Budget
Leonard B. Zuza, Budget Examiner (FSF), Office of Management and Budget
The Honorable Brent Scowcroft, Assistant to the President for National Security
Affairs

The Honorable Lawrence S. Eagleburger, Deputy Secretary of State
The Honorable Arnold Kanter, Undersecretary of State for Political Affairs
The Honorable Paul D. Wolfowitz, Under Secretary of Defense for Policy
The Honorable Thomas M.T. Niles, Assistant Secretary of State for European and
Canadian Affairs

The Honorable Richard A. Clarke, Assistant Secretary,
Bureau of Politico-Military Affairs

The Honorable Nelson C. Ledsky, Special Cyprus Coordinator

The Honorable Michael Sotirhos, Ambassador to Greece

The Honorable Richard C. Barkley, Ambassador to Turkey

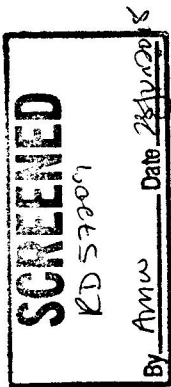
The Honorable Robert E. Lamb, Ambassador to Cyprus

Mr. Dennis B. Ross, Director, Policy Planning Staff

The Congress

1992

INSTITUTES
American Enterprise Institute



DEPARTMENT OF JUSTICE
EXECUTIVE SECRETARIAT CONTROL DATA SHEET

From: PERLE, RICHARD, AMERICAN ENTERPRISE INSTITUTE, DC
To: AG. ODD: NONE
Date Received: 01-13-92 Date Due: NONE Control #: X92011400586
Subject & Date
01-08-92 LETTER, ON BEHALF OF THE AMERICAN ENTERPRISE
INSTITUTE FOR PUBLIC POLICY RESEARCH, ANNOUNCING THE AIRING
OF A HISTORIC THREE-PART TELEVISION SERIES ENTITLED,
"THE GULF CRISIS: THE ROAD TO WAR." THE SERIES WILL
PREMIER ON FRIDAY, JANUARY 17, 1992, AT 10:00 P.M. (EST)
ON THE DISCOVERY CHANNEL, AND CONTINUES ON
JANUARY 24 AND 31, 1992; WITH ENCLOSURE.

Referred To:	Date:	Referred To:	Date:	
(1) OAG;	01-14-92	(5)		W/IN:
(2)		(6)		
(3)		(7)		PRTY:
(4)		(8)		1Z
INTERIM BY:		DATE:		OPR:
Sig. For: NONE		Date Released:		MAU

Remarks
(1) FOR INFORMATION.

Other Remarks:

✓FILE: INSTITUTES/AMERICAN ENTERPRISE INSTITUTE

REMOVE THIS CONTROL SHEET PRIOR TO FILING AND DISPOSE OF APPROPRIATELY

8 JAN 92

American Enterprise Institute for Public Policy Research



RECEIVED
DEPT. OF JUSTICE

'92 JAN 13 P3:28

EXECUTIVE SECRETARIAT

January 8, 1992

Dear Friend:

The American Enterprise Institute is pleased to announce the airing of a historic three-part television series: *The Gulf Crisis: The Road to War*, featuring interviews with cabinet-level Bush Administration officials and the recollections of members of the President's Deputies Committee.

The series, which premieres on The Discovery Channel on January 17 at 10:00 p.m. (EST), and continues on January 24 and 31, was produced for AEI by Brian Lapping Associates, London.

We hope you will tune in to this unique series, which promises to have immediate impact and lasting historic value.

Sincerely,

A handwritten signature in cursive script that reads 'Richard Perle'.

Richard Perle
Resident Fellow

Enclosure



FOR IMMEDIATE RELEASE

January 6, 1992

Contact: Meg Molyneaux
202 862-5927

THE GULF CRISIS: THE ROAD TO WAR

An Unprecedented Inside Look at Bush Administration

Decision-Making from the Invasion of Kuwait through Desert Storm

Premiering January 17, and continuing on two consecutive Fridays from 10:00 to 11:00 p.m. (ET), the American Enterprise Institute and The Discovery Channel presents the U.S. television exclusive of *The Gulf Crisis: The Road to War*.

The three-part series features Bush Administration officials who formulated U.S. policy during the Gulf War. The Vice President, Secretary of State James Baker, Secretary of Defense Dick Cheney, National Security Council Adviser Brent Scowcroft, CIA Director and former Deputy NSC Adviser Robert Gates, and Joint Chiefs Chairman Colin Powell will share their personal experiences as they evolved during the Gulf crisis in interviews with American Enterprise Institute Resident Fellow and former Assistant Secretary of Defense Richard Perle.

The television series will also include highlights from *The Gulf War Conference*, an AEI-sponsored day of discussions among the members of the Deputies Committee--the President's team tasked with day-to-day management of the crisis--and others who were centrally involved (see attached).

The first episode, *Invasion*, airing on Friday, January 17, from 10:00 to 11:00 p.m. (ET), focuses on the Bush Administration's initial response to Iraq's August 2, 1990 invasion of Kuwait, including the decision to impose sanctions and early efforts to form the international coalition. The discussion for this episode was moderated by Arthur Miller, professor at Harvard Law School. Episode two, *Counterplans*, airing on Friday, January 24, from 10:00 to 11:00 p.m. (ET), reviews U.S. strategy to counter the invasion, including United Nations support and the Congressional debate and vote authorizing the use of force. The second panel was led by Richard Perle. The final episode, *War*, airing on Friday, January 31, from 10:00 to 11:00 p.m. (ET), explores the Bush Administration's final diplomatic efforts, the key decisions which led to the ground and air phases of the war, and the cease fire. The final discussion was moderated by Charles Wheeler, former Washington Bureau Chief of BBC Television.

The series will be re-broadcast on consecutive Wednesdays, January 22 and 29, and February 5 from 12 Midnight to 1:00 a.m. (ET).

The Gulf Crisis: The Road to War was produced under the auspices of the American Enterprise Institute for The Discovery Channel by Brian Lapping Associates.

OVER

THE GULF WAR CONFERENCE

Participants

Hon. Lawrence S. Eagleburger

Deputy Secretary, U.S. Department of State

Hon. Paul D. Wolfowitz

Under Secretary for Policy, U.S. Department of Defense

Hon. Robert M. Kimmitt

U.S. Ambassador to Germany and former Under Secretary for Political Affairs, U.S. Department of State

Hon. John H. Kelly

Former Assistant Secretary for Near Eastern and South Asian Affairs, U.S. Department of State

Mr. Dennis Ross

Director, Policy Planning Staff, U.S. Department of State

Dr. Richard N. Haass

Special Assistant to the President and Senior Director, Near East and South Asian Affairs, National Security Council

Mr. Joseph Wilson

Former Chargé d'Affairs, U.S. Embassy, Baghdad

H.E. Sheikh Saud Nasir Al-Sabah

Kuwaiti Ambassador to the United States

Sir Charles Powell

Former Foreign Affairs Adviser to British Prime Ministers Margaret Thatcher and John Major

Screened by NARA (RD-F) 02-07-2019
FOIA # 60048 (URTS 16457) DOCID:
70106684

1992

DEPARTMENT OF JUSTICE
EXECUTIVE SECRETARIAT CONTROL DATA SHEET

From: PERKINS, ROSWELL B., PRES., THE AMERICAN LAW INSTITUTE, PA
To: MEMBERS OF THE AMERICAN LAW INSTITUTE (AG.) ODD: NONE
Date Received: 06-15-92 Date Due: NONE Control #: X92061609143
Subject & Date

06-11-92 LETTER ADVISING THAT THE INSTITUTE'S 1992 ANNUAL MEETING HELD RECENTLY IN WASHINGTON, DC, WAS WELL ATTENDED AND HIGHLY PRODUCTIVE. INVITES THE AG TO JOIN ONE OF THE MEMBERS CONSULTATIVE GROUPS AND ENCLOSES A DESCRIPTION OF THE INSTITUTE'S MEMBERS CONSULTATIVE GROUPS AND A LIST OF THOSE THAT ARE CURRENTLY ACTIVE. ALSO WELCOMES ANY CONTRIBUTIONS THE EX OFFICIO MEMBERS MAY WISH TO DONATE TO THE INSTITUTE. **

	Referred To:	Date:	Referred To:	Date:	
(1)	OAG;	06-16-92	(5)		W/IN:
(2)			(6)		
(3)			(7)		PRTY:
(4)			(8)		1
	INTERIM BY:		DATE:		OPR:
	Sig. For: AG.		Date Released:		MAU

Remarks

** (SEE EXEC. SEC. 91120920305 - CONTROL SHEET ATTACHED.)

(1) TO OAG FOR ACTION.

Other Remarks:

✓FILE: INSTITUTES/AMERICAN LAW INSTITUTE

REMOVE THIS CONTROL SHEET PRIOR TO FILING AND DISPOSE OF APPROPRIATELY

11 June 92

THE AMERICAN LAW INSTITUTE

4025 CHESTNUT STREET
PHILADELPHIA, PENNSYLVANIA 19104

215-243-1600

June 11, 1992

'92 JUN 15 P3:32

F-50071 215-243-1600

To the Members of the American Law Institute:

The Institute's 1992 Annual Meeting in Washington was well attended and highly productive.

We completed a major phase of the Institute's work, and an enormously challenging one. The final vote on the Corporate Governance project, taken on May 13, represented the successful wrap-up of an endeavor embarked on in the late '70's -- one that took us over 12 years to finish. The fact that the Institute was able to sustain the intensive work during this long period is a testimonial to the Institute's stability and the continuity of its project teams. Not many organizations have the staying power to conduct this type of work and to reach an ultimate consensus.

Other projects advanced significantly at the 1992 Annual Meeting, including Law Governing Lawyers, Complex Litigation, Mortgages and Suretyship. The proposals in the Complex Litigation project for federal choice of law were vigorously and thoughtfully debated. The Reporters' positions and approach were generally sustained, and the Reporters expect to return with a final submission next year. The principal discussion in Law Governing Lawyers was addressed to the work product rule; the sections dealing with conflict of interest were also given further attention.

We have a busy year ahead, and we count on you to share in that effort. One important way to participate is, of course, by joining one of the Members Consultative Groups. Enclosed is a description of the Institute's Members Consultative Groups and a list of those that are currently active. By receiving a draft at an early stage and by giving "inputs" to the Reporters before the Council of the Institute reviews the draft, you may be able to contribute even more effectively to the formulation of an Institute statement than is practical at the Annual Meeting. Also, joining in discussion at an early stage will greatly enhance a member's understanding of the Reporter's work and thereby enrich one's participation at the Annual Meeting.

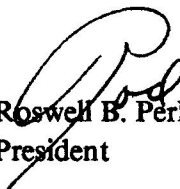
The Institute's financial stability is a key element in its capacity to do the kind of sustained, objective work that has earned the Institute the respect it enjoys. In transmitting to you your dues statement, we ask that you consider becoming a Sustaining Member if you have not already done so. (The dues of Sustaining Members are double those of their respective dues classifications. Thus, for a practicing lawyer, the sustaining membership dues are \$400, while for a professor or member of the

Page 2
June 11, 1992

judiciary they are \$200. A life member who pays at this time an amount equal to the regular dues he or she paid as an elected member will be classified as a Sustaining Life Member. Sustaining Members and Sustaining Life Members are listed separately at the front of the membership list in the Annual Meeting Program.)

* * *

Your continued support of the Institute is deeply appreciated. The Council, the officers and staff of the Institute join me in wishing you a very pleasant summer.



Roswell B. Perkins
President

Enclosures

THE AMERICAN LAW INSTITUTE

4025 CHESTNUT STREET
PHILADELPHIA, PENNSYLVANIA 19104

215-243-1600

To: ALI Ex Officio Members
From: Paul A. Wolkin, Exec. Vice-Pres.
Date: June 11, 1992

A dues statement is not included with this mailing to Ex Officio Members because they are not obligated to pay annual dues. However, contributions to the work of the Institute are welcome.

The Institute also welcomes the participation of Ex Officio Members in its Members Consultative Groups for the various projects listed in the enclosed Memorandum.

THE AMERICAN LAW INSTITUTE
4025 Chestnut Street
Philadelphia, PA 19104-3099

MEMORANDUM

To: ALI Members
Re: Members Consultative Groups
Date: June 1992

Members are invited to participate in ALI projects in Members Consultative Groups. Members of each group meet at their expense, usually once a year for a day or two at the ALI Conference Center (see address on letterhead), to review Reporters' drafts prior to their submission to the Council or Advisers. Luncheons and other meeting amenities are provided by ALI at the sessions.

To join any group of which you are **not** presently a member, please complete the form below and return it to ALI at the above address.

☐ Complex Litigation Project

Federal Income Tax Project:

☐ Integration of the Individual and Corporate Income Taxes

☐ Principles of the Law of Family Dissolution: Analysis and Recommendations

Restatement of the Law Third:

- ☐ The Law Governing Lawyers
- ☐ Property (Donative Transfers)
- ☐ Property - Security (Mortgages)
- ☐ Property (Servitudes)
- ☐ Suretyship
- ☐ Torts: Products Liability
- ☐ Trusts
- ☐ Unfair Competition

Uniform Commercial Code:

- ☐ Article 2 (Sales)
- ☐ Article 5 (Letters of Credit)
- ☐ Article 8 (Investment Securities)
- ☐ Article 9 (Secured Transactions)

Name _____
Please Print

Firm/Assn. _____

Address _____

City _____ State _____ Zip _____

Telephone () _____ Fax () _____

Date _____

DEPARTMENT OF JUSTICE
EXECUTIVE SECRETARIAT CONTROL DATA SHEET

From: PERKINS, ROSWELL B., PRES., THE AMERICAN LAW INSTITUTE, DC
To: MEMBERS OF THE INSTITUTE (AG.) ODD: NONE
Date Received: 05-05-92 Date Due: NONE Control #: X92050506989
Subject & Date
05-01-92 LETTER FURNISHING A SEQUEL TO THE MEMORANDUM OF
APRIL 13 ENTITLED "GROUND RULES FOR DISCUSSION OF PROPOSED
FINAL DRAFT OF PRINCIPLES OF CORPORATE GOVERNANCE AT 1992
ANNUAL MEETING," WHICH WAS SENT TO THE AG WITH THE PROGRAM
FOR THE ANNUAL MEETING.
(SEE EXEC. SEC. 92042806511, 92042006054, 92041505872,
92040605449, 91120920305 & 9112119538 CONTROL SHEETS
ATTACHED.)

	Referred To:	Date:		Referred To:	Date:	
(1)	OAG;	05-05-92	(5)			W/IN:
(2)			(6)			
(3)			(7)			PRTY:
(4)			(8)			1
	INTERIM BY:			DATE:		OPR:
	Sig. For:	NONE		Date Released:		EHZ

Remarks
ORIGINAL ENCLOSURES TO OAG.
INFO CC: OAG (PATTERSON, SCHATZ).

Other Remarks:

✓FILE: INSTITUTES/AMERICAN LAW INSTITUTE

REMOVE THIS CONTROL SHEET PRIOR TO FILING AND DISPOSE OF APPROPRIATELY

THE AMERICAN LAW INSTITUTE

4025 CHESTNUT STREET
PHILADELPHIA, PENNSYLVANIA 19104

215-243-1600

'92 MAY -5 10:45

EXECUTIVE SECRETARIAT

ROSWELL B. PERKINS
PRESIDENT

May 1, 1992

To Members of The American Law Institute:

This is a sequel to the memorandum of April 13 entitled "Ground Rules for Discussion of Proposed Final Draft of Principles of Corporate Governance at 1992 Annual Meeting." That memorandum was sent to you with the Program for the Annual Meeting.

Motion Received

Under heading 3 of the April 13 memorandum, it was stated that motions received by April 22 would be mailed out to all members on May 1. Only one such motion was received, and a copy is enclosed, together with the 3-page supporting statement permitted by the terms of the April 13 memorandum. The motion would amend § 7.03 as well as § 7.04, but the substance of the motion falls within the description under heading 2 of the April 13 memorandum. Accordingly, the motion will be entertained on Wednesday morning, May 13, as described under heading 2 of the April 13 memorandum.

Reporters' Response

Also enclosed is the Reporters' Response to the motion. (The April 13 memorandum also restricted the Reporters to three pages.) Attached to the Reporters' Response are certain proposed modifications in the Proposed Final Draft which the Reporters will recommend to the membership on May 12, subject to Council approval at its meeting on May 11.

Attendance at the Corporate Governance Sessions

In the April 13 memorandum we called attention to the fact that

"A major campaign is underway to assure high attendance on May 12 and 13 by members who are corporate practitioners."

That campaign, promoted by an organization which has mailed to its members "a list of ALI members in the 100 largest law firms," has been greatly intensified. In order to help assure that there not be an imbalance of representation at the Annual Meeting, we strongly urge all members to attend. As stated in the April 13 memorandum, the voting on the most important motions is expected to take place between 10:30 A.M. and 12:30 P.M. on Wednesday, May 13.



Roswell B. Perkins
President

Enclosures

AMERICAN LAW INSTITUTE

PRINCIPLES OF CORPORATE GOVERNANCE:
ANALYSIS AND RECOMMENDATIONS

MOTION TO AMEND § 7.03(d) AND 7.04(a) OF THE PROPOSED FINAL DRAFT

Motion:

The undersigned respectfully moves that the following amendments be made to Chapter 1, Part VII of the Proposed Final Draft:

1. Substitute the following for § 7.03(d):

(d) Except as provided in § 7.03(b), the court should dismiss a derivative action:

(1) If such action is commenced prior to the response of the board or a committee thereof to the demand required by § 7.03(a), unless the board or committee fails to respond within a reasonable time; or

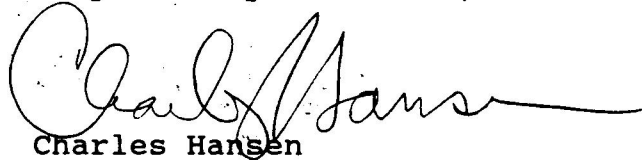
(2) If the demand is rejected by the board of directors, a majority of whom are not interested [§ 1.23] in the conduct or transaction described in, and forming the basis for, the demand required by § 7.03, provided the rejection satisfies the requirements of the business judgment rule as specified in § 4.01(c).

2. Substitute the following for § 7.04(a):

(a) The complaint shall plead with particularity facts that, if true, raise a significant prospect that the conduct or transaction complained of did not meet the applicable requirements of Parts IV (Duty of Care and the Business Judgment

Rule), V (Duty of Fair Dealing), or VI (Role of Directors and Shareholders in Transactions in Control and Tender Offers) in light of any approvals of the conduct or transaction communicated to the plaintiff by the corporation. In addition, if the board has rejected a demand pursuant to § 7.03(d)(2), a plaintiff shall only have the right to challenge the rejection if the complaint pleads with particularity, facts that, if true, raise a significant prospect that a majority of the board which rejected the demand was interested [§ 1.23] in the conduct or transaction described in and forming the basis for, the demand, or that the rejection did not otherwise satisfy the requirements of the business judgment rule as specified in § 4.01(c). The corporation and any defendants shall be entitled to dismissal of the complaint prior to discovery if the complaint fails to set forth sufficiently such particularized facts.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Charles Hansen", with a long horizontal flourish extending to the right.

Charles Hansen

SUPPORTING STATEMENT

The thrust of the proposed amendments is to restore to the Project the important role now played by a disinterested board of directors in the management of derivative litigation.

Unlike a claim a plaintiff brings on his own behalf to enforce a right he personally possesses, a derivative action is a suit brought on behalf of a corporation to enforce a corporate cause of action. Kamen v. Kemper Fin. Servs., Inc., 111 S. Ct. 1711, 1716 (1991). Accordingly, derivative claims belong to the corporation and not to individual shareholders. Auerbach v. Bennett, 393 N.E.2d 994, 1000 (N.Y. 1979). The corporation, and not the individual shareholder plaintiff, is the real plaintiff. Ross v. Bernhard, 396 U.S. 531, 538 (1970).

"As with other questions of corporate policy and management, the decision whether and to what extent to explore and prosecute such claims lies within the judgment and control of the corporation's board of directors." Auerbach, 393 N.E.2d at 1000. As the United States Supreme Court noted during its last Term, it is a "basic principle of corporate governance that the decisions of a corporation -- including the decision to initiate litigation -- should be made by the board of directors or the majority of shareholders." Kemper, 111 S. Ct. at 1719.

Accordingly, a shareholder seeking to bring litigation on behalf of the corporation must first exhaust his intracorporate remedies by making a pre-litigation demand upon the corporation's board unless "extraordinary conditions" excuse demand. Kemper, 111 S. Ct. at 1716. Under Delaware law, such extraordinary conditions exist only where particularized allegations raise a "reasonable doubt" as to at least one of the two prongs of Delaware's Aronson standard: "(i) director disinterest and independence or (ii) whether the directors exercised proper business judgment in approving the challenged transaction." Grobow v. Perot, 539 A.2d 180, 186 (Del. 1988) (citing Aronson v. Lewis, 473 A.2d 805, 814 (Del. 1984)). Other courts recognize only the first prong of the Aronson test as a means by which a plaintiff can establish that demand is excused by extraordinary conditions, see, e.g., Lewis v. Graves, 701 F.2d 245, 248 (2d Cir. 1983), and even in Delaware the second prong of Aronson permits a finding that demand is excused only "in rare cases" involving conduct that is "so egregious on its face that board approval cannot meet the test of business judgment, and a substantial likelihood of director liability therefore exists." Aronson, 473 A.2d at 815.

When demand is required, a board decision to reject demand is evaluated by the courts just like any other business decision by disinterested directors, in accordance with the business judgment rule's presumption that the directors of a

corporation act on an informed basis, in good faith and in the honest belief that the action taken was in the best interests of the company. Judicial scrutiny of the merits of such board decisions is not permitted. If plaintiff fails to overcome the presumption of the rule, the matter is terminated with finality. See, e.g., Bach v. National W. Life Ins. Co., 810 F.2d 509, 510, 514 (5th Cir. 1987) (Colorado law); Joy v. North, 692 F.2d 880, 887 (2d Cir. 1982) (Connecticut law); Lewis v. Anderson, 615 F.2d 778, 781-82 (9th Cir. 1979) (California law); Swanson v. Traer, 249 F.2d 854, 858-59 (7th Cir. 1957) (Illinois law); Stoner v. Walsh, 772 F. Supp. 790, 800 (S.D.N.Y. 1991) (New York law); Woodward & Lothrop, Inc. v. Schnabel, 593 F. Supp. 1385, 1399 (D.D.C. 1984) (District of Columbia law); Roberts v. Alabama Power Co., 404 So. 2d 629, 632, 636 (Ala. 1981) (Alabama law); Levine v. Smith, 591 A.2d 194, 200 (Del. 1991) (Delaware law); Black v. NuAire, Inc., 426 N.W.2d 203, 209-10 (Minn. Ct. App. 1988) (Minnesota law); Auerbach v. Bennett, 393 N.E.2d 994, 996, 1000-03 (N.Y. 1979) (New York law); Zauber v. Murray Sav. Ass'n, 591 S.W.2d 932, 936 (Tex. Civ. App. 1979) (Texas law); W. Klein & J. Coffee, Business Organization and Finance: Legal and Economic Principles 168 (2d ed. 1986) ("the prevailing law in Delaware and New York is that the court will not examine the substantive merits" in cases in which demand is required and refused). Discovery is permitted only if the shareholder plaintiff is able to plead facts overcoming the business judgment rule's presumption. Stoner, 772 F. Supp. at 806-7; Allison v. General Motors Corp., 604 F. Supp. 1106, 1120-21 (D. Del.), aff'd mem., 781 F.2d 1026 (3d Cir. 1985); Levine, 591 A.2d at 208-10. No board report to the court is required, and the nature of the underlying cause of action is irrelevant.

Standing in sharp contrast to all of this well-settled law is the Proposed Final Draft ("P.F.D."), which is premised upon the Reporters' belief that whether or not the board is capable of objective judgment -- i.e., the standard utilized by current law -- "is the wrong criterion on which the availability of substantive judicial review should be made to depend." P.F.D. at 731. Instead, according to the Reporters, "the focus of the court's review . . . should be on the logic of the board's . . . reasoning." P.F.D. at 738. Accordingly, the Draft imposes a "litigation tax" upon corporations (Dooley & Veasey, The Role of the Board in Derivative Litigation: Delaware Law and the Current ALI Proposals Compared, 44 Bus. Law. 503, 539 (1989)) that permits a shareholder to proceed with derivative litigation even after his demand is rejected by a disinterested board. The merits of the board's decision is subject to judicial scrutiny in virtually all cases, even though under present law such scrutiny is available only where demand is excused because the directors are deemed to be legally incapable of objective judgment.

Specifically, in pure duty of care cases (which are extraordinarily rare), § 7.13(a) instructs the court to apply the business judgment rule as set forth in S 4.01(c), but only after the board submits "a report or other written submission setting forth the procedures and determinations of the board" -- a

requirement not imposed by present law. Discovery is allowed by § 7.13(c) if the plaintiff demonstrates that "a substantial issue exists" and that he "is unable without undue hardship to obtain . . . information by other means" -- a standard most plaintiffs will contend applies to them. Thus, even in pure duty of care cases, judicial involvement may be substantial.

In duty of fair dealing cases, the role of the judiciary includes all of the above plus much more, with the court "basically looking to whether dismissal of the action would be fair to the corporation" by determining whether in light of the governing substantive standard the board's conclusion was "reasonably determined ... based on grounds that the court deems to warrant reliance" (P.F.D. at 726). If the cause of action involves the alleged retention of a significant improper benefit, dismissal is impossible under § 7.10(b)(2)(B) in all but the most unusual case.

The treatment of derivative litigation in the Proposed Final Draft will lead to an upsurge in derivative litigation activity and substantially enhanced settlement values whenever a shareholder who disagrees with corporate policy writes a demand letter. At a time of general recognition that there is too much litigation and when the available empirical evidence illustrates that "a significant proportion of shareholder suits are without merit" and that "awards [in such suits] are paid to attorneys far more frequently than to shareholders" (Romano, The Shareholder Suit: Litigation Without Foundation?, 7 J.L. Econ. & Organ. 55, 61 (1991)), the American Law Institute should not adopt recommendations which, if followed, will facilitate more frequent and more costly shareholder litigation.

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New § 7.03(d)(2) is the key provision of the proposed amendment. It provides that where the board is not "interested", as defined in § 1.23 of the Project, the board may reject the demand with finality so long as the rejection is in accordance with the business judgment rule, as set forth in § 4.01(c).

Amended § 7.04(a) is designed to implement the concepts of new § 7.03(d)(2). Section 7.04(a) now makes clear that when a disinterested board rejects demand, the shareholder's only challenge remains as it is under present law -- i.e., to the board's disinterest or whether the rejection otherwise met the requirements of § 4.01(c); namely, the need for an informed rational decision.

If the board is not disinterested, or is disinterested and chooses not to reject the demand, §§ 7.07-7.13 as now drafted come into play. Revised §§ 7.03 and 7.04 therefore simply add to Part VII a remedy for disinterested boards which is available today under the law of almost every jurisdiction which has decided the issue.

REPORTERS' RESPONSE TO THE HANSEN MOTION

The Reporters believe the motion submitted by Charles Hansen to amend §§ 7.03 and 7.04 (the "Hansen Motion") should be rejected. Space limitations constrain our response, but the following deficiencies in the Hansen Motion stand out:

(1) The Hansen Motion inaccurately describes prevailing law, departs significantly even from Delaware law, and ignores the developing law in other jurisdictions;

(2) The Hansen Motion would reverse the core precepts of the Principles of Corporate Governance by effectively extending the business judgment rule to cover all self-dealing cases, contrary to Part V. In its net effect, the motion would withdraw virtually all discretion from the trial court and thereby convert the duty of fair dealing into a largely precatory standard; and

(3) The Hansen Motion in its supporting statement mischaracterizes both the provisions and effect of Part VII of the Proposed Final Draft, exaggerates its procedural requirements, and ignores the important respects in which it simplifies the termination of duty of care actions.

I. THE HANSEN MOTION INACCURATELY DESCRIBES PREVAILING LAW, DEPARTS SIGNIFICANTLY EVEN FROM DELAWARE LAW, AND IGNORES THE DEVELOPING LAW IN OTHER JURISDICTIONS.

Prevailing law is not uniform as the Hansen Motion implies, but rather straddles a variety of positions (see Proposed Final Draft at pp. 728-29, 757-59). Furthermore, the Hansen Motion departs significantly even from the Delaware law that it purports to follow. Under Delaware law, demand is excused whenever the complaint pleads particularized facts sufficient to raise a "reasonable doubt" either that (i) a majority of the board was interested in the challenged conduct or transaction, or (ii) the challenged transaction was not the product of a valid exercise of business judgment. See *Aronson v. Lewis*, 473 A.2d 805, 814-15 (Del. 1984); *Levine v. Smith*, 591 A.2d 194, 205 (Del. 1991). The second prong quoted above preserves a limited role for judicial discretion – thus sometimes permitting the court to employ in effect a "smell test" in the case of a self-dealing transaction. See *RCM Securities Fund, Inc. v. Stanton*, 928 F.2d 1318 (2d Cir. 1990); *Thorpe v. Cerbco*, Fed. Sec. L. Rep. (CCH) Para. 96,416 (Del. Chancery Ct. Nov. 7, 1991). Yet, the Hansen Motion simply drops this second prong. Furthermore, under Delaware law, when demand is excused (because a "reasonable doubt" exists as to either prong), a Delaware court first considers the good faith and independence of the litigation committee "and the bases supporting its conclusions," and then may in its discretion apply its own "independent business judgment" in reviewing the committee's justifications for dismissal. See *Zapata Corp. v. Maldonado*, 430 A.2d 779, 788-89 (Del. 1981). None of this could be considered under the Hansen Motion, which would therefore place the ALI in the position of foreclosing judicial review (particularly in the "demand excused" context) to a considerably greater extent than does Delaware.

Although the Hansen Motion seems preoccupied with Delaware law, the principal impact of Part VII, viewed realistically, will probably be on jurisdictions other than Delaware. As noted above, several jurisdictions other than Delaware have begun to formulate their own standards of judicial review for derivative actions. Part VII intends to provide guidance for courts in these jurisdictions that have already declined to follow a business judgment standard. Historically, the ALI's concern has been with the formulation of standards for all states, and its recommendations should not be overly constrained by the law of any one state.

II. THE HANSEN MOTION ATTEMPTS TO REVERSE THE BASIC ARCHITECTURE OF THE PRINCIPLES BY EFFECTIVELY EXTENDING THE BUSINESS JUDGMENT RULE TO COVER THE DUTY OF FAIR DEALING. IN SO DOING, IT COULD UNDERMINE PUBLIC CONFIDENCE IN THE INTEGRITY OF AMERICAN CORPORATE LAW AND MAY IN TIME INVITE OVERREGULATION.

A fundamental distinction between Part IV (Duty of Care) and Part V (Duty of Fair Dealing) is that certain "core" Part V transactions are subject to a limited judicial review to the extent of asking

whether the board "could reasonably have concluded that the transaction was fair to the corporation." The ALI's membership has approved this distinction on several occasions. Part VII simply carries it forward by providing in § 7.10(a)(2) that the board's determination to reject a well-pleaded derivative action challenging a Part V transaction that is subject to such a review should be governed by a similar test under Part VII. Thus, the standard expressed in § 7.10(a)(2) – whether the board or committee "reasonably determined that dismissal was in the best interests of the corporation" – dovetails with the above-quoted standard in § 5.02(a)(2)(B). In this light, the Hansen Motion represents still another attempt to reargue the same recurring issue that the ALI's membership has faced several times before: should the board's approval of a self-dealing transaction receive closer judicial scrutiny than that applied to a transaction free of self-dealing and subject to the business judgment rule? Over the long run, the hidden danger in overextending the business judgment rule so that it applies to the duty of fair dealing is not simply that unfairness may sometimes result, but that courts will predictably respond to such instances by cutting back on and reinterpreting the business judgment rule. In short, the risk in stretching the rule too far is that doing so exposes the rule to judicial amendment, *sub silentio*, that will reduce its effectiveness in all contexts.

In addition, the "reasonably determined" standard in § 7.10(a)(2) is far from onerous, does not mandate *de novo* review, and can be easily satisfied whenever the board or committee has persuasive reasons to seek termination. Section 7.04 is also available to screen out actions at the pleading stage that fail its "significant prospect" standard. Greater protection is not needed. By effectively substituting a business judgment standard for self-dealing, the Hansen Motion would overextend the business judgment rule to a context well beyond its traditional and proper scope.

The degree of protection that the Hansen Motion would give to unfair self-dealing is extraordinary. For example, even if the plaintiff could plead with particularity facts showing a "significant prospect" that the CEO had bought a major asset or division from the company at an unfair price, the court would have no real discretion to hear the action, so long as a majority of the board was technically disinterested under the narrow definition of that term in § 1.23. Indeed, even if all the directors had long-standing personal relationships with the CEO that caused them to lack the capacity to exercise "objective judgment in the circumstances" (§ 7.09(a)(1)), the Hansen Motion would still effectively compel dismissal.

The adoption of a purely business judgment approach to all self-dealing cases could undermine public and investor confidence in the integrity of both the corporate system and American corporate law. It cannot be a "principle of corporate governance" that there is no judicial review of self-dealing. In undertaking the Corporate Governance Project, the ALI sought to assure a firm foundation for American corporate governance, in part to forestall the need for greater federal regulation. Ultimately, by leaving little, if any, role for judicial oversight, the Hansen Motion undermines that objective and could in the long-run expose corporate governance to more intrusive regulation.

III. IN ITS SUPPORTING MATERIALS THE HANSEN MOTION MISCHARACTERIZES BOTH THE PROVISIONS AND EFFECT OF PART VII, WHICH PROVIDES AN EFFECTIVE MEANS FOR SCREENING OUT FRIVOLOUS ACTIONS AND CANDIDLY DISCOURAGES DUTY OF CARE LITIGATION.

Although critics have sought to characterize Part VII as relying on a "litigation model" of corporate governance, the basic architecture of Part VII refutes this charge. In overview, Part VII provides an effective screening mechanism that combines the following elements:

(1) Section 7.03 adopts a rule of "universal demand," which places the board at center-stage and assures it an opportunity to evaluate every derivative action. Rather than being pro-plaintiff, § 7.03 positions the board or committee so that its views can always be presented to the court as a basis for dismissal. In contrast, Delaware law encourages plaintiffs not to make demand but instead to litigate the collateral issue of its excuse.

(2) Section 7.04 requires the complaint to "raise a significant prospect that the conduct or transaction complained of did not meet the applicable requirements" of Parts IV, V, or VI. Thus, not only is the initial burden placed squarely on the plaintiff, but the burden is more precisely formulated than

the Delaware standard, which requires only that the plaintiff plead a "reasonable doubt." Furthermore, under § 7.04, the plaintiff's pleadings must respond to, and explain the inadequacy of, "any approvals of the conduct or transaction communicated to the plaintiff by the corporation." This requirement increases plaintiff's burden because it requires the complaint to address and materially discredit the board's approval or ratification of the transaction. If the board's rejection of demand also communicates additional information (for example, that the board relied on a specified investment banking opinion), the complaint must respond to this information as well. Moreover, discovery is simply not available to the plaintiff at this motion-on-the-pleadings stage (See Proposed Final Draft at p. 674 and Exhibit A hereto). As a result, a "plain vanilla" duty of care action that asserts only that an improvident business decision was made by negligent directors will not survive a § 7.04 motion on the pleadings. In short, § 7.04 is consistent with a presumption of regularity surrounding directorial decisions.

(3) Under § 7.06, absent special circumstances, the court must stay discovery pending the corporation's review and evaluation of the action, and under § 7.13(c), discovery is in all cases carefully limited. Thus, although loose charges have been made that Part VII invites discovery, its actual language clearly permits the corporation to make its motion for dismissal unimpeded by plaintiffs' attempts to obtain discovery. Even in the special case when discovery is permitted, § 7.13(c) establishes strict criteria to control discovery, which require the plaintiff first to identify specific deficiencies in the board's or committee's report that convince the court that discovery is necessary (see Proposed Final Draft at pp. 780-82). In fact, § 7.13(c) is probably more restrictive than Delaware law, which allows "limited discovery" when demand is excused (see *Zapata Corp. v. Maldonado*, supra, at 788).

(4) Section 7.10(a)(1) adopts a business judgment standard of review with respect to the corporation's motion to dismiss a duty of care action. The substantive standard of review here is not different from that proposed by the Hansen Motion.

(5) Section 7.13(d) puts the burden of proof squarely on the plaintiff in a duty of care action. Contrary to some commentary by proponents of the Hansen Motion, no burden of production is placed on the corporation in such a case. As a result, an abbreviated submission that might consist of only a single page could be used in such a due care case, which could simply state that the board or committee, with the assistance of counsel, had reached a business judgment not to pursue the action. Part VII treats the substance of the board or committee's determinations much the same as any other business judgment, without any requirement that the report express, defend, or argue its rationale in such a due care case. Further Illustrations and commentary, if approved by the Council, will be added to resolve any possible ambiguity in this regard. See Exhibit A.

As a result of these provisions, Part VII strongly discourages unpromising duty of care litigation, possibly to a greater degree than does Delaware law. For example, even if a majority of the board were deemed "interested" in the action, demand on the board would not be excused (as it would be under Delaware law), and the determinations of the litigation committee would be entitled to the benefit of the business judgment rule, with the burden of proof clearly on the plaintiff. In contrast, Delaware places the procedural burdens on the committee in the demand excused context. Ultimately, the impact of Part VII (in both the due care and duty of fair dealing contexts) is neither to make the derivative action an easily available remedy for general use nor an illusory one, but rather to permit it to survive as a limited remedy for use in cases where other mechanisms of corporate governance have broken down.

Exhibit A
PRINCIPLES OF CORPORATE GOVERNANCE:
ANALYSIS AND RECOMMENDATIONS

Reporters' Proposed Revisions to Part VII
(subject to Council approval)

In order to avoid unnecessary motions or discussion at the Annual Meeting, to cure possible ambiguities, and to reflect better the Reporters' intent, the Reporters propose to make the following changes in Part VII:

1. Section 7.04(a) should be revised so that its last sentence on page 670 would read as follows:

"Defendants shall be entitled to dismissal of the complaint prior to discovery if the complaint fails to set forth sufficient particularized facts."

This change is consistent with the existing commentary at the end of Comment *c* to § 7.04 at p. 674.

2. At page 673, the phrase "and the precise value can only be ascertained by reference to nonpublic corporate information" in the eighth and ninth lines of the first new paragraph on the page should be deleted and a period placed after the word "property" in the eighth line. This change is non-substantive.

3. The following new Illustration should be substituted for Illustration No. 1 at pp. 744-45:

PROPOSED NEW ILLUSTRATION
(replacing Illustration 1 at pp. 744-45)

1. A derivative suit is filed alleging an improvident decision by the directors of Corporation A to expand into a new line of business. Although Corporation A moves to dismiss the complaint under § 7.04, the trial court denies this motion. The board of directors asks Counsel to evaluate the complaint. Counsel reviews the original board proceedings at the time the decision was made and examines and evaluates the matters alleged in the complaint. Counsel reports to the board of directors at a special meeting that the gravamen of the complaint is a breach of the duty of care, that the action, in counsel's judgment, lacks substantial merit, and that it might well result in expenditures by the Corporation greater than any likely recovery if the action were pursued. The board of directors, after discussion, votes to request dismissal of the action as being contrary to the best interests of the corporation. Corporation A files with the court a motion to dismiss, together with a statement that the board of directors duly met on a specified date; that the board received advice from counsel (whom the board designated to assist the board); that the board informed itself by fully considering the matters set forth in the complaint and other information that the board considered relevant, including counsel's advice; and that the board determined that the action was contrary to the best interests of the corporation. The court should dismiss the action under § 7.10(a)(1) unless the plaintiff carries the burden of showing that (a) the directors participating in the determination were not as a group capable of objective judgment in the circumstances, or (b) the board's decision did not satisfy the requirements of the business judgment rule (§ 4.01(c)).

4. The fourth sentence to Comment *c* to § 7.10 on page 736 would be revised to read as follows:

"Such a standard is set forth in § 7.10(a)(1), which treats the board's or committee's determinations much the same as any other business judgment, without any requirement that the board or committee express, defend, or argue its rationale."

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The President's Letter

As we approach what is hoped to be the final voting on the Corporate Governance project, a few thoughts occur to me that I would like to share with the members.

1. *The concern over "freezing" corporate law*

At various times members and non-members have expressed a concern that the Corporate Governance project could have the effect of "freezing" corporate law. Clearly this will not be the impact of the project. On the contrary, by reaching out to identify fundamental issues and undertaking a deeper analysis than most other endeavors in the field of corporation law, the project is likely to encourage further discussion and continued adaption of the law to new situations, rather than to cause a legal paralysis.

No organization could be more dedicated than the ALI to evolution and change in law when human experience demonstrates the need for change. The pronouncements of the *Principles of Corporate Govern-*

ance are no exception to that philosophical orientation of the Institute.

The *Principles of Corporate Governance* are framed as "Analysis and Recommendations" rather than as a Restatement. Even as to Restatements issued by the Institute, the concept of change is integral to the Institute's work. In the 1923 report of the "Committee on the Establishment of a Permanent Organization for the Improvement of the Law," chaired by Elihu Root, which is the document that launched the Institute, it was stated:

Furthermore, as the conditions of life are never static, law, which is the expression of those conditions, to fulfill the functions of its existence must be a body of rules continuously subject to modification and change. . . . As we conceive it, the

(Continued on page 2)

Rehnquist, Blackmun, Richardson, Martin, and Gates Will Speak at 1992 Annual Meeting

Chief Justice of the United States William H. Rehnquist will deliver the opening remarks at the ALI's 69th Annual Meeting on Tuesday, May 12, at 10:00 a.m., and Justice Harry A. Blackmun will address the Annual Dinner on Thursday evening, May 14. The 1992 Annual Meeting, which will mark the Institute's return to its usual venue of The Mayflower in Washington, D.C. after last year's visit to San Francisco, will also feature luncheon addresses by former Attorney General Elliot Lee Richardson, by Secretary of Labor Lynn M. Martin, and by the Director of Central Intelligence, Robert M. Gates.

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Six Projects Featured on Annual Meeting Agenda

In returning to the familiar surroundings of Washington, D.C., for this year's Annual Meeting, the Institute will also be reverting to its regular four-day format in contrast to the five days needed for last year's Meeting in San Francisco. The May 12-15 substantive agenda will nevertheless remain heavy, with six projects to be covered, and for the third consecutive year it has been necessary to schedule a day of separate, concurrent sessions. In addition to the long-awaited Proposed Final Draft of Principles of Corporate Governance, the membership will be considering tentative drafts on Complex Litigation, The Law Governing Lawyers, Mortgages, and Suretyship, as well as hearing a progress report on a new Federal Income Tax Project study exploring the possibility of integrating the individual and corporate income taxes.

(Continued on page 3)

The President's Letter

(Continued from page 1)

work of the American Law Institute which we propose is not like that of those who build a house. There will never be a time when the work is done and its results labelled "A Complete Restatement of the Law." The work of restating the law is rather like that of adapting a building to the ever-changing needs of those who dwell therein. . . . Such a task, by the very definition of its object, is continuous.

The most eloquent testimonial to the truth of these propositions is the fact that the ALI has found it necessary to promulgate second or third Restatements in various areas to keep up with changes in the law.

In summary, I see no danger that the product of the Institute's work presently reflected in the Proposed Final Draft of the Corporate Governance project will, if adopted by the Institute, become "etched in stone."

2. Concern over limitations of scope

Some members have expressed the wish that the *Principles* tackled a wider range of issues. One example of such a complaint is that the project does not propose a comprehensive structure for regulating the right to launch a hostile takeover bid. Different observers will identify different topics that they may wish were covered.

I would respond, simply, that there are limitations on what the Institute can successfully do. These limitations include, for example, (1) the need, in grappling with some kinds of issues, for the extensive input of other disciplines, not adequately encompassed by the make-up of our own membership; (2) widely divergent viewpoints within the Council on some issues, such that a proposal could not effectively be put before the membership; and (3) the inability to complete a pro-

ject within a reasonable time frame if its scope becomes overly extensive.

There are, indeed, other organizations and bodies, governmental and private, present and future, to which one can fairly look for further consideration of many aspects of the field of corporate governance. The Institute's role can best be played in relation to a modest segment of the entire spectrum of issues. Indeed, I believe that, historically, the Institute has acquired the respect that it enjoys partly by exhibiting restraint. The choices that have been made in limiting the scope of the Corporate Governance project to what we see in the Proposed Final Draft were not always readily reached, but I believe they are justified.

3. The processes of the Institute at work

In this project I believe we can see the overall effectiveness of the Institute's sometimes ponderous processes. It has been a long trek since the issuance of T.D. No. 1, but a worthwhile one. The constructive input

(Continued on page 3)

The Importance of Participation at Annual Meetings

All members are aware that no statement of the Institute becomes final until voted on by the members. A broad representation and active participation of our membership, including informed voting on motions, are essential in order to assure that objectivity and disinterestedness, which have been cornerstones of the ALI tradition, will prevail.

The agenda this year is once again a full one and not without some controversial issues. This adds to the importance of our members making unusual efforts to attend and to join in the discussions throughout the sessions. I know that all the members share my hope that the voting body will be informed and independent and fully representative of the Institute membership as a whole.

With specific reference to Corporate Governance, please note that any motion or motions relating to what has been identified as the most critical remaining issue (the standard of judicial review applicable to a determination by the board of directors or committee of the board that a proposed or pending action would be or is contrary to the best interests of the corporation) is expected to be voted upon between 10:30 a.m. and 12:30 p.m. on Wednesday, May 13. See the "Ground Rules for Discussion" mailed to members with this year's Annual Meeting Program.

President B. Perkins
President

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Annual Meeting Projects

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The report on income tax integration will be submitted at noon on Tuesday, May 12, by Reporter Alvin C. Warren, Jr. A draft of the study, which has proceeded concurrently with one conducted by the Treasury Department, was reviewed in March by the Institute's Tax Advisory Group. Current plans call for a revised version of that draft to be issued as a Reporter's Study for public comment and for discussion at next year's Annual Meeting leading to a possible vote by the Institute on the desirability of integration. The complementary proposals contained in previous Reporter's Studies on Subchapter C by Professor William D. Andrews were predicated on the assumption that integration would not take place.

Discussion of the Proposed Final Draft on Corporate Governance, which will be submitted by Chief Reporter Melvin A. Eisenberg and Reporters Harvey J. Goldschmid, Marshall L. Small, Ronald J. Gilson, and John C. Coffee, Jr., is scheduled to begin at 2:00 p.m. on Tuesday and to continue through the end of the day on Wednesday, May 13. The scope of review will not encompass the entire 1068-page draft, most of which was given final approval by the membership last year as part of Tentative Draft No. 11, but it will be limited essentially to the derivative-action provisions of Part VII, the ratification provisions of Part V, and other

significant changes from Tentative Draft No. 11 as outlined in a Reporter's memorandum approved by the Council and distributed with the Proposed Final Draft. The most controversial issue remaining in the project is the standard of judicial review to be applied to a corporate decision to dismiss a derivative action as contrary to the best interests of the corporation. The voting in connection with this issue, which particularly involves §§7.04, 7.08, 7.09, 7.10, and 7.13, is scheduled to take place between 10:30 a.m. and 12:30 p.m. on Wednesday, with discussion of these sections to begin at 8:30 a.m.

Tentative Draft No. 3 of the Complex Litigation Project will be presented at 9:00 a.m. on Thursday, May 14, by Reporter Arthur R. Miller and Associate Reporter Mary Kay Kane. The draft consists of a brief chapter on the consolidation of complex litigation in state courts, supplemented by an elaborate Model System for State to State Transfer and Consolidation printed in an appendix as a Reporter's Study, and an extensive chapter on the crucial topic of choice of law in consolidated cases. The latter takes the form of a proposed federal code premised on the conclusion that such a code is needed to foster the fair and efficient handling of complex litigation in the federal courts. This draft completes the submission of new material for the project, but a Proposed Final Draft, revising and integrating Tentative Drafts 1-3, is anticipated for consideration at the 1993 Annual Meeting.

Reporter Charles W. Wolfram and Associate Reporters John Leubsdorf, Thomas D. Morgan, and
(Continued on page 4)

President's Letter

(Continued from page 2)

that has been received from the Consultants and Advisers, from the Institute's membership, and from colleagues active in the Section on Business Law of the American Bar Association has surely helped to enhance the quality of product embodied in the Proposed Final Draft. We are deeply grateful to all who took the time and made the effort to provide constructive criticism.

4. The voting

We have elsewhere in this issue of *The ALI Reporter* emphasized the importance of having a balanced attendance when we meet on May 12 and 13. It is critical that our final deliberations not be subject to the charge of a skewed representation, weighted toward any particular interest group. I trust that all members will make a major effort to be on hand. The schedule for voting on the key issue is indicated in the accompanying box.

Finally, as I said at the opening of last year's Annual Meeting:

[T]he precept of leaving one's client at the door must be honored if we are to preserve our integrity as an organization. . . . The Institute cannot become a forum for power plays by clients, and I will do everything in my capacity during my tenure to prevent that result. Any member who does not have the stomach for voting in a way that an important client would not like simply should not vote. . . . Our Membership Committee endeavors to select members whose careers bespeak confidence, intellectual integrity, and independence as thinkers on legal matters. If you believe that you might find it within yourself to vote so as to respect a client's interest because it is the client's interest or perceived interest, rather than to reach your own independent and informed conclusions, you owe it to yourself and the Institute not to participate.

Roswell B. Perkins
President

Annual Meeting Projects

(Continued from page 3)

Linda S. Mullenix will lead the discussion of Restatement Third, The Law Governing Lawyers, which will begin at 2:00 p.m. on Thursday afternoon and continue on Friday, May 15. On the agenda will be both last year's Tentative Draft No. 4, which could not be completed in 1991 in San Francisco, and a new Tentative Draft No. 5. Remaining to be dealt with in Tentative Draft No. 4 are §§213-216 (Conflicts of Interest) and §§50-88 (Client and Lawyer: The Financial and Property Relationship). New submissions in Tentative Draft No. 5 include a greatly expanded treatment of the work product doctrine, briefly introduced in Tentative Draft No. 2 but not then discussed, and a chapter setting forth for the first time the basic requirements of the client-lawyer relationship.

Both Restatement Third, Property—Security (Mortgages), and Restatement Third, Suretyship, are scheduled for separate, concurrent sessions on Thursday, May 14, the former at 9:00 a.m. and the latter at 2:00 p.m. If, however, Corporate Governance should be completed earlier than anticipated on Wednesday, Mortgages may be moved up to Wednesday afternoon and Suretyship rescheduled for Thursday morning. Tentative Draft No. 2 of Mortgages, which will be submitted by Reporters Grant S. Nelson and Dale A. Whitman, continues to develop the implications of the relationships among mortgagors, mortgagees, and third parties, including problems that may arise when mortgaged property is transferred. Reporter Neil B. Cohen and Associate Reporter Daniel Mungall, Jr., will introduce Tentative Draft No. 1 of Suretyship. The occasion will mark the Institute's first revisiting in depth of the subject since completion of the Restatement of Security in 1941, although some aspects of suretyship law, notably those relating to the Statute of Frauds, were covered more recently in the Restatement, Second, of Contracts.

Annual Meeting Speakers

(Continued from page 1)

Chief Justice Rehnquist will be opening the Annual Meeting for the third time, having previously done so in 1987 and 1990. A graduate of Stanford University and Stanford Law School and a former law clerk to Justice Robert H. Jackson of the United States Supreme Court, Chief Justice Rehnquist practiced law in Phoenix from 1953 to 1969, when he became a United States Assistant Attorney General in the Justice Department's Office of Legal Counsel. In 1973 he was appointed to the Supreme Court by President Nixon, and in 1986 he was chosen by President Reagan to succeed Warren E. Burger as Chief Justice. He is the author of *The Supreme Court: The Way It Was — The Way It Is* (1987).

Justice Blackmun, the principal speaker at the Annual Dinner on May 14, served 11 years on the United States Court of Appeals for the Eighth Circuit before President Nixon elevated him to the Supreme Court in 1970 to fill the seat left vacant by the resignation of Justice Abe Fortas. Born in southern Illinois, Justice Blackmun was raised in the Minneapolis-St. Paul area of Minnesota. In 1929, he received his bachelor's degree in mathematics, both Phi Beta Kappa and summa

cum laude, from Harvard University. After obtaining his law degree in 1932 from the Harvard Law School, he returned to Minnesota to clerk for United States Circuit Judge John B. Sanborn, whom he was to succeed on the Eighth Circuit a quarter of a century later. From 1933 to 1950 he practiced law in a Minneapolis firm and also taught at the St. Paul (now William Mitchell) College of Law and the University of Minnesota Law School. In 1950, he left private practice to become resident counsel for the Mayo Clinic in Rochester, Minnesota. President Eisenhower appointed him to the Court of Appeals in 1959.

In addition to his judicial duties, Justice Blackmun has maintained an active schedule of writing, speaking, and teaching. A frequent participant in intellectual symposiums both in this country and abroad, he was co-moderator of the Aspen Institute's annual Seminar on Justice and Society from 1960 to 1969, and he chaired the faculty of the 1977 Salzburg Seminar in American Studies.

Elliot Richardson, who will represent the Institute's class of 1967, which attains life membership at the 1992 Annual Meeting, will speak on Wednesday, May 13, at the annual luncheon honoring both the new life members and those who have been elected to membership within the previous five years. A native of Boston, Mr. Richardson also received his undergraduate and

(Continued on page 5)

Annual Meeting Speakers

(Continued from page 4)

law degrees from Harvard University. After clerkships with Judge Learned Hand of the United States Court of Appeals for the Second Circuit and Justice Felix Frankfurter of the United States Supreme Court, he entered private practice in Boston, eventually in 1961 becoming a partner in the Boston firm of Ropes & Gray. His long career of public service in both state and federal government began in 1953 when he became an Assistant to United States Senator Leverett Saltonstall of Massachusetts; subsequently, from 1956 to 1961, he was Acting Counsel to the Governor of Massachusetts; Assistant Secretary for Legislation in the United States Department of Health, Education, and Welfare; United States Attorney for Massachusetts; and Special Assistant to the Attorney General of the United States.

After three years of private practice, Mr. Richardson was elected Lieutenant Governor of Massachusetts in 1964 and State Attorney General in 1966. In 1969 he returned to Washington and served successively as Under Secretary of State; Secretary of Health, Education, and Welfare; Secretary of Defense, and Attorney General of the United States, from which position he resigned in October of 1973 rather than carry out President Nixon's order to dismiss Special Watergate Prosecutor Archibald Cox. Subsequently, he served President Ford as Ambassador to the Court of St. James and as Secretary of Commerce and President Carter as Ambassador-at-Large and Special Representative of the President at the Third Law of the Sea Conference in Washington.

Since 1980, Mr. Richardson has been resident partner in the Washington, D.C. office of the international law firm of Milbank, Tweed, Hadley & McCloy. The recipient of numerous awards and honors, he was recently the personal representative of the Secretary-General of the United Nations in connection with the Nicaraguan elections, and, since 1989, he has been President Bush's Special Representative for Multilateral Assistance to the Philippines.

Secretary Martin, who will speak at the luncheon on Thursday, May 14, is a native of Chicago who graduated from the University of Illinois in 1960 and was a teacher for nine years in Illinois public schools. In 1972 she began a career in elective politics, successively serving four years on the Board of Winnebago County, two years in the Illinois House of Representatives, and two years in the Illinois Senate. In 1980 she was elected to the first of five consecutive terms representing the 16th District of Illinois in the United States House of Representatives.

During her tenure in Congress, Secretary Martin served one term on the House Rules Committee, two terms on the Armed Services Committee, and three terms on the Budget Committee, including a period as that Committee's ranking Republican member. In 1982 she became the first Republican woman to attain an elective leadership post in the House when she was chosen Vice Chair of the Republican Conference, a position she held for four years. After she ran unsuccessfully for the United States Senate in 1990, President Bush nominated her to become the Nation's 21st Secretary of Labor, an office she assumed on February 22, 1991.

Robert M. Gates, who will speak off the record at a luncheon on Friday, May 15, was sworn in as Director of Central Intelligence on November 6, 1991. In this position he heads the Intelligence Community (all foreign intelligence agencies of the United States) and also directs the Central Intelligence Agency. Mr. Gates previously served as Assistant to the President and Deputy for National Security Affairs, National Security Council.

A native of Kansas, Mr. Gates received a bachelor's degree from the College of William and Mary in 1965, a master's degree in history from Indiana University in 1966, and a doctorate in Russian and Soviet history from Georgetown University in 1974. He joined the Central Intelligence Agency in 1966, serving as an intelligence analyst and as one of two Assistant National Intelligence Officers for Strategic Programs. In 1974 he was assigned to the National Security Council Staff.

After more than five years at the National Security Council, serving three Presidents, Mr. Gates returned to the Central Intelligence Agency in late 1979. He subsequently was appointed to a series of administrative positions and served as National Intelligence Officer for the Soviet Union prior to his appointment as Deputy Director for Intelligence in January 1982. In that position he directed the Central Intelligence Agency's component responsible for all analysis and production of finished intelligence for nearly four and a half years. In September of 1983, he was concurrently appointed Chairman of the National Intelligence Council and thus assumed responsibility for directing the preparation of all national intelligence estimates produced by the Intelligence Community. He served as Deputy Director of Central Intelligence from April 1986 to January 1989, and as Acting Director from December 18, 1986, until May 26, 1987.

Other highlights of the Annual Meeting in Washington include a Tuesday luncheon and colloquium for the particular benefit of new members, a tour on Wednesday for spouses of members and guests to Annapolis, Maryland, that will include a luncheon at the Officer's Club of the United States Naval Academy, and a Wednesday evening reception by the Council at the Library of Congress.

Casner Campaign More Than Halfway Towards Goal

The Institute's recently announced campaign to establish an A. James Casner Reporter's Chair is already more than halfway towards achieving its announced goal of \$300,000. As of April 24, \$169,601.24 in gifts and pledges had been contributed to establish the Chair in memory of Professor Casner, whose career as Reporter and Adviser for Institute projects spanned more than half a century and who retired as the Reporter for the Restatement of Property (Donative Transfers) shortly before his death in 1990 at the age of 83.

The Casner Chair will be the second established by the Institute to be occupied by an active ALI Reporter of proven effectiveness for the duration of the project on which the Reporter is engaged. The Justice R. Ammi Cutter Reporter's Chair, created last year, is presently held by Professor Melvin A. Eisenberg, the Chief Reporter for Principles of Corporate Governance.

Those seeking more information about contributions for either the Casner or the Cutter Chair should contact Paul Wolkin or Helene Cohen at the Philadelphia offices of the Institute: (215)243-1600.

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Mendes Hershman, ALI-ABA Committee Member and Adviser to ALI Projects, Dies at Age of 80

Mendes Hershman of New York City, a member of the ALI-ABA Committee since 1969 and an Adviser for many years to the Institute's Restatements of Property and its Principles of Corporate Governance, died of heart failure on March 2. He was 80.

In 1967 Mr. Hershman designed ALI-ABA's Modern Real Estate Transactions, a comprehensive, pragmatic course based on transactional problems arising in current practice. He chaired this annual program, which was most often offered as a week-long summer course, until his death. The 1992 program will be dedicated to his memory.

Just a few weeks before his death, Mr. Hershman was honored by the New York State Bar Association with the presentation of its 50-Year Lawyer Award in recognition of his career achievements. His many contributions to the profession included service as Chair of the New York State Commission on Judicial Nomination, Chair of the New York State Commission on Uniform State Laws, member and former Chair of the Legal Advisory Committee to the Board of the New York Stock Exchange, and Chair of the 1984 Committee for the Recodification of State Insurance Law. He was also a member of the Board of Editors of the *New York Law Journal*.

In 1988 the ALI-ABA Committee honored Mr. Hershman for his many contributions to continuing legal education. In addition to the course described above, these included service as Chair of the Institute's Special Committee on Post-Admission Legal Education and of the Advisory Committee for ALI-ABA's Study of the Quality of Continuing Legal Education, which was published in 1980. Mr. Hershman also

served for many years as Chair of ALI-ABA's Program Subcommittee and had planned to preside over its March 14 meeting in Philadelphia.

Mr. Hershman was a graduate of New York University and Harvard Law School and the author of many articles on insurance, corporate, securities, and real estate law. A former Chair of the Business Law Section of the American Bar Association, he was an Adviser for the Landlord and Tenant, Donative Transfers, Servitudes, and Mortgages segments of the Restatement of Property and an Adviser for Corporate Governance from the project's inception. He retired as Senior Vice President and General Counsel of the New York Life Insurance Company in 1977 after 31 years of service and joined the Manhattan law firm of Rosenman & Colin as a senior partner. He was named of counsel in 1990.

In Memoriam

Elected

Thomas S. Currier, New York, N.Y.

Life

Frank E. Day, Portland, Ore. **Walter T. Fisher**, Chicago, Ill. **Ronald J. Foulis**, Santa Rosa, Calif. **John George Fox**, Washington, D.C. **Mendes Hershman**, New York, N.Y. **J. Frank McKenna, Jr.**, Pittsburgh, Pa. **Will Shafroth**, Raleigh, N.C. **Roszel C. Thomsen**, Baltimore, Md. **Job D. Turner, Jr.**, Lexington, Ky.

Ex Officio

James P. Coleman, Ackerman, Miss.

ALI-ABA Publishes Guidelines for Quality Performance in Law Practice

ALI-ABA has recently published *A Practical Guide to Achieving Excellence in the Practice of Law: Standards, Methods, and Self-Evaluation*, a comprehensive manual of guidelines for law-practice quality. The book, which is the culmination of a two-and-a-half year project by ALI-ABA to design a "practice neutral" model of law practice quality standards with a distinct self-assessment component, enunciates standards, with detailed self-evaluation questions, for law practice in virtually any field or setting. Not tied to any specific practice area, it is designed to be used by lawyers in law firms of all sizes, as well as by solo practitioners, in-house corporate legal staffs, and government lawyers.

The standards are grouped into three sections: stages of client representation, managing the practice, and skills employed in accomplishing the client's objective. Each section sets forth several standards, each of which is accompanied by comments, illustrations, cross-references to other standards in the book, self-evaluation questions, and references. In addition to numerous references to the Model Code of Professional Responsibility and the Model Rules of Professional Conduct adopted by the American Bar Association, the work also frequently refers to Tentative and Preliminary Drafts of the Institute's Restatement of the Law Governing Lawyers.

The volume can be used in a variety of ways. One of the most useful features is the body of step-by-step self-evaluation questions that any lawyer can use to mea-

sure his or her own competence against the standards. References at each stage point the way to self-improvement, as does a 46-page, fully annotated bibliography containing more than 200 references for further review and training.

A 524-page, paperbound text, *A Practical Guide to Achieving Excellence in the Practice of Law* (Order No. B686) is available from ALI-ABA at a special introductory price, through June 30, 1992, of \$60 plus \$5.25 postage and handling per copy; after June 30, the regular price will be \$75 plus \$5.25 postage and handling per copy. For orders of five or more copies, the price is \$50 per copy plus actual shipping charges.

The book's 309-page, paperbound *Self-Evaluation Checklists Supplement* (Order No. B686), compiles all of the self-review questions from the main text in a convenient checklist format with room for the reader's notes. It is available at a special introductory price, through June 30, of \$25 plus \$2.50 postage and handling per copy; after June 30, the regular price of the supplement is \$30 plus \$2.50 postage and handling per copy. For orders of five or more copies, the price is \$18 per copy plus actual shipping charges.

The main text and supplement are also available, when ordered together through June 30, at a special introductory combined price of \$70 plus \$5.25 postage and handling per set; after June 30, the regular combined price is \$95 plus \$5.25 postage and handling per set. For orders of five or more sets, the price is \$68 per set plus actual shipping charges.

All orders may be placed by writing to ALI-ABA, 4025 Chestnut Street, Philadelphia, PA 19104-3099.

Interview with Kripke Provides New Installment of ALI Audiovisual Series

An interview with Homer Kripke, emeritus member of the Permanent Editorial Board for the Uniform Commercial Code and a participant in the drafting of the Code almost from its inception, constitutes the second installment in the ongoing ALI Audiovisual History Series. In this September, 1989, interview conducted by the Institute's Executive Vice President, Paul A. Wolkin, Professor Kripke reflects candidly upon the personalities and events surrounding the development of both the UCC and the Institute's Federal Securities Code, for which he served as an Adviser.

Copies of the videotape containing the interview with Professor Kripke may be purchased from the Institute for \$50 each (order no. 7002). A viewing at the Institute's Philadelphia headquarters can also be arranged by calling (215) 243-1658. A pamphlet containing the edited transcript of the interview can be ordered for \$10 plus \$1.25 for postage and handling. Copies of both the videotape and edited transcript of the first installment in the series, an interview with Director Emeritus Herbert Wechsler, are similarly available. An interview with the late Professor A. James Casner is in preparation.

Membership Notes

• Council member **Michael Boudin**, who recently resigned his position as Judge of the United States District Court for the District of Columbia, has been nominated by the President to serve on the United States Court of Appeals for the First Circuit.

• **Mortimer M. Caplin** of the District of Columbia bar has been appointed by Governor Douglas Wilder to the Board of Visitors of the University of Virginia. Mr. Caplin is a former Professor at the University of Virginia School of Law. The Board of Visitors is the University's governing body.

• University of Chicago Provost and former Law School Dean **Gerhard Casper**, a member of the Council, has been chosen as the new President of Stanford University. He will succeed Donald Kennedy, who was a luncheon speaker during last year's Annual Meeting in San Francisco.

• **Kenneth W. Dam**, Vice President for Law and External Relations at IBM, has been named Interim President and Chief Executive Officer of United Way of America. In August Mr Dam is scheduled to succeed Mr. Casper as Provost of the University of Chicago, a position Mr. Dam left in 1982 when he joined the Reagan administration as Deputy Secretary of State.

• Another member of the Institute's Council, Professor **Herma Hill Kay** of the University of California at Berkeley School of Law, will succeed **Jesse Choper** as Dean at Boalt Hall on July 1.

• **Daniel C. Knickerbocker, Jr.**, Professor of Law Emeritus at Seton Hall University School of Law, is the author of *Fiduciary Responsibility Under ERISA*, a new 560-page deskbook published by Butterworth.

• Professor **Susan R. Martyn** of the University of Toledo College of Law, a member of the ALI-ABA Committee on Continuing Professional Education and the Reporter for ALI-ABA's 1987 Williamsburg Peer Review Conference, has been named the first Anderson-Fornoff Professor of Law and Values at Toledo.

• Council member **Vincent L. McKusick** has retired as Chief Justice of the Supreme Judicial Court of Maine and become Of Counsel to the Portland firm of Pierce, Atwood, Scribner, Allen, Smith & Lancaster.

• **David A. Sonenshein**, Professor of Law at Temple University and Director of the American Institute for Law Training Within the Office, has been named the I. Herman Stern Professor of Law at Temple. Professor Sonenshein is co-author of the recently published second edition of the evidence casebook, *Principles of Evidence*.

• First Vice President **Charles Alan Wright**, the William B. Bates Chair for the Administration of Justice at the University of Texas School of Law, will receive on May 19 the honorary degree of Doctor of Humane Letters from the Episcopal Theological Seminary of the Southwest.

Calendar of Forthcoming Meetings and Courses

May 1992

- 4-8 **Planning Techniques for Large Estates** (ALI-ABA C743) The New York Helmsley Hotel, New York, N.Y.
- 7-8 **Twelfth Annual New England Computer Law Conference.** Cosponsored by Massachusetts Continuing Legal Education, Inc. (ALI-ABA C755) Copley Plaza, Boston, Mass.
- 7-9 **Lender Liability: Defense and Prevention** (ALI-ABA C740) The Madison Hotel, Washington, D.C.
- 7-9 **Inverse Condemnation and Related Government Liability.** Cosponsored by the Pacific Legal Foundation. (ALI-ABA C730) Westin Hotel, Seattle, Wash.
- 8 **Public Speaking for Lawyers** (*Professional Skills*) (ALI-ABA K753) Holiday Inn Capitol, Washington, D.C.

- 11 **Council Meeting** (ALI) The Mayflower, Washington, D.C.
- 12 **The Practical Lawyer Editorial Board Meeting** (ALI-ABA) The Mayflower, Washington, D.C.
- 12 **ALI-ABA Committee on Institute Size** (ALI) The Mayflower, Washington, D.C.
- 12-15 **Annual Meeting** (ALI) The Mayflower, Washington, D.C.
- 13 **The Practical Real Estate Lawyer Editorial Board Meeting** (ALI-ABA) The Mayflower, Washington, D.C.
- 14 **Committee on Membership** (ALI) The Mayflower, Washington, D.C.
- 14 **The Practical Litigator Editorial Board Meeting** (ALI-ABA) The Mayflower, Washington, D.C.

Calendar of Forthcoming Meetings and Courses

- 16 **ALI Executive Committee (ALI)** The Mayflower. Washington, D.C.
- 16 **The Practical Tax Lawyer Editorial Board Meeting (ALI-ABA)** The Mayflower, Washington, D.C.
- 28-29 **Securities Law for Nonsecurities Lawyers (ALI-ABA C663)** Hotel del Coronado, Coronado, Calif.
- 28-29 **The Prosecution and Defense of Shareholder Litigation Against Directors and Officers (ALI-ABA C735)** Loews L'Enfant Plaza Hotel, Washington, D.C.
- 29 **Evidence for Litigators (Professional Skills) (ALI-ABA K769)** The Madison Hotel, Washington, D.C.

June 1992

- 4-5 **Commercial Leases: Selected Issues in Drafting and Negotiating for Troubled Times (ALI-ABA C736)** Loews L'Enfant Plaza Hotel, Washington, D.C.
- 4-6 **Partnerships: UPA, ULPA, Taxation, Drafting, Securities, and Bankruptcy.** Cosponsored by the South Carolina Bar. (ALI-ABA C707) Omni Charleston Place, Charleston, S.C.
- 5 **Advanced Writing and Editing for Lawyers (Professional Skills) (ALI-ABA K762)** The Madison Hotel, Washington, D.C.
- 9-10 **Principles of the Law of Family Dissolution: Analysis and Recommendations. Drafting Subcommittee. (ALI)** University of California at Berkeley School of Law, Berkeley, Calif.
- 11-13 **Investment Company Regulation and Compliance (ALI-ABA C770)** Sheraton Manhattan (Sheraton City Squire), New York, N.Y.
- 12-13 **Restatement of the Law Third. Torts. Invitational Planning Conference. (ALI)** ALI Conference Center, Philadelphia, Pa.
- 12-14 **UCC Article 9 Study Committee (ALI)** U.S. Grant Hotel, San Diego, Calif.
- 17 **Restatement of the Law Third. Suretyship. Members Consultative Group. (ALI)** ALI Conference Center, Philadelphia, Pa.
- 17-19 **Employment Discrimination and Civil Rights Actions in Federal and State Courts.** Cosponsored by California Continuing Education of the Bar. (ALI-ABA C742) Loews Santa Monica Beach Hotel, Los Angeles, Calif.
- 18-19 **Restatement of the Law Third. Suretyship. Advisers. (ALI)** ALI Conference Center, Philadelphia, Pa.
- 22-26 **Estate Planning in Depth.** Cosponsored by CLE for Wisconsin of the University of Wisconsin Law School. (ALI-ABA C756) University of Wisconsin Law School Edgewater Hotel Madison, Wisc.
- 22-26 **Environmental Litigation.** Cosponsored by the University of Colorado School of Law. (ALI-ABA C757) University of Colorado School of Law, Boulder, Colo.
- 25 **Restatement of the Law Third. Property (Servitudes). Members Consultative Group. (ALI)** ALI Conference Center, Philadelphia, Pa.
- 26-27 **Restatement of the Law Third. Property (Servitudes). Advisers. (ALI)** ALI Conference Center, Philadelphia, Pa.
- 29-
Jul. 3 **Advanced Law of Pensions and Deferred Compensation (ALI-ABA C758)** Ritz-Carlton, Boston, Mass.

July 1992

- 6-10 **Basic Law of Pensions and Deferred Compensation.** Cosponsored by Stanford Law School. (ALI-ABA C759) Stanford Law School, Palo Alto, Calif.
- 6-10 **Fundamentals of Bankruptcy Law - In Depth.** Cosponsored by Stanford Law School. (ALI-ABA C760) Stanford Law School, Palo Alto, Calif.
- 13-17 **Modern Real Estate Transactions.** Cosponsored by Virginia Continuing Legal Education. (ALI-ABA C761) University of Virginia School of Law, Charlottesville, Va.

August 1992

- 19-21 **Land Use Institute: Planning, Regulation, Litigation, Eminent Domain, and Compensation.** Cosponsored by the FAU/FIU Joint Center for Environmental and Urban Problems. (ALI-ABA C750) Sheraton Palace Hotel, San Francisco, Calif.
- 20-21 **Estate Planning for the Family Business Owner.** Cosponsored by the ABA Sections of Taxation and of Real Property, Probate, and Trust Law. (ALI-ABA C771) The Ritz Carlton, San Francisco, Calif.
- 28-29 **Conference on Sophisticated Pension Plan and Compensation Issues (ALI-ABA C787)** Pichacho, Santa Fe, N.M.

Future ALI Annual Meeting Dates

Date	City	Date	City
May 11-14, 1993	Washington, D.C.	May 13-16, 1997	To be determined
May 17-20, 1994	Washington, D.C.	May 12-15, 1998	Washington, D.C.
May 16-19, 1995	Chicago, Ill.	May 11-14, 1999	Washington, D.C.
May 14-17, 1996	Washington, D.C.	May 16-19, 2000	To be determined

THE ALI REPORTER

(ISSN 0164-5757)

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EXECUTIVE SECRETARIAT CONTROL DATA SHEET

From: WOLKIN, PAUL A., THE AMERICAN LAW INSTITUTE, PHILADELPHIA, PA
To: MEMBERS OF THE INSTITUTE (AG.) ODD: NONE
Date Received: 04-27-92 Date Due: NONE Control #: X92042806511
Subject & Date

04-21-92 MEMO FURNISHING COPIES OF THEIR ANNUAL REPORTS IN
ADVANCE OF THE MAY ANNUAL MEETING TO AFFORD MEMBERS AN
OPPORTUNITY TO BE APPRISED OF THE STATUS OF INSTITUTE
AFFAIRS BEFORE THE MEETING AND TO EXPEDITE PROCEEDINGS AT
THE SESSIONS.

SEE EXEC. SEC. 92042006054, 92041505872, 92040605449,
91112119538 & 91120920305 - CONTROL SHEETS ATTACHED.

Referred To:	Date:	Referred To:	Date:	
(1) OAG;	04-28-92	(5)		W/IN:
(2)		(6)		PRTY:
(3)		(7)		1
(4)		(8)		OPR:
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21
APR 92

Remarks

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THE AMERICAN LAW INSTITUTE

4025 CHESTNUT STREET
PHILADELPHIA, PA 19104

PAUL A. WOLKIN
EXECUTIVE VICE PRESIDENT
(215) 243-1611
FAX: (215) 243-1664

RECEIVED
DEPT. OF JUSTICE

'92 APR 27 P4:02

EXECUTIVE SECRETARIAT

To: Members of the Institute
From: Paul A. Wolkin
Date: April 21, 1992

Once again, this year we are mailing our Annual Reports in advance of the May Annual Meeting to afford members an opportunity to be apprised of the status of Institute affairs before the Meeting and to expedite proceedings at the sessions. Officers will be pleased to respond at the Meeting to any questions members may have after reading the Reports.

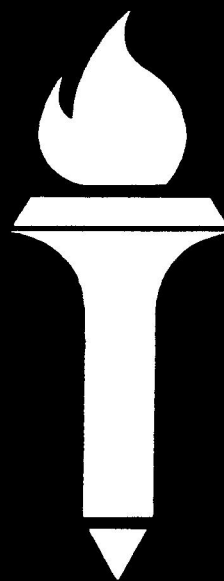
Enclosures

**THE AMERICAN
LAW INSTITUTE**

ANNUAL REPORTS

SIXTY-NINTH ANNUAL MEETING

**MAY 12-15, 1992
WASHINGTON, D.C.**



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- (a) To promote the development of continuing legal education programs;
- (b) To encourage the development of such programs by providing such assistance as may be necessary;
- (c) To encourage the development of such programs by educational institutions, and to participate in effective continuing legal education programs;
- (d) To encourage and assist the development of regional, state, and local agencies to engage in post-admission educational activities and, when desired, aid in their operation;
- (e) To engage in relevant research and experimentation in educational techniques and methods likely to be useful in continuing legal education, including the methods of teaching and developing a sense of professional responsibility;
- (f) To conduct conferences of all agencies engaged or interested in continuing legal education activities with a view to coordinating, expanding, and improving such activities, and to encourage cooperation among such groups;
- (g) To maintain and expand a publications program of post-admission legal education audio-visual material and texts, handbooks, study outlines, and periodicals and other material designed to further the objectives of the Com

1992 ANNUAL REPORTS

- (h) To or
cours AMERICAN LAW INSTITUTE-AMERICAN BAR ASSOCIATION
COMMITTEE ON CONTINUING PROFESSIONAL EDUCATION

- (i) To take such other actions as may be proper and necessary to achieve programs of post-admission legal education of high quality for all lawyers that will meet the needs of the public in discharging its public and professional responsibilities.

DEPARTMENT OF JUSTICE
EXECUTIVE SECRETARIAT CONTROL DATA SHEET

From: HAZARD, GEOFFREY C., JR., AMERICAN LAW INSTITUTE, PA
To: MEMBERS OF AMERICAN LAW INSTITUTE (CC: AG.) ODD: NONE
Date Received: 04-17-92 Date Due: NONE Control #: X92042006054
Subject & Date

04-14-92 LETTER ADVISING THAT THE AMERICAN LAW INSTITUTE
WILL RETURN TO WASHINGTON, DC, FOR ITS 69TH ANNUAL MEETING
ON MAY 12-15, 1992, AT THE MAYFLOWER HOTEL. ADVISES THAT
SEVERAL DRAFTS TO BE SUBMITTED FOR CONSIDERATION HAVE BEEN
MAILED TO THE MEMBERSHIP. PROVIDES DETAILS ON SEVERAL
EVENTS FOR THE ANNUAL MEETING. ENCLOSURES A COPY OF THE
PROGRAM AND ACCEPTANCE FORM, AS WELL AS THE MEMO ON THE
SCOPE OF REVIEW FOR CORPORATE GOVERNANCE MENTIONED ON **

Referred To:	Date:	Referred To:	Date:	
(1) OAG;PATTERSON	04-20-92	(5)		W/IN:
(2)		(6)		
(3)		(7)		PRTY:
(4)		(8)		3
INTERIM BY:		DATE:		OPR:
Sig. For: NONE		Date Released:		MAU

Remarks

** PAGE 13 OF THE PROGRAM.
(SEE EXEC. SEC. 92041505872, 92040605449, 91112119538 AND
91120920305 - CONTROL SHEETS ATTACHED.)

ORIGINAL TO OAG.
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14 APR 92

THE AMERICAN LAW INSTITUTE

4025 CHESTNUT STREET
PHILADELPHIA, PENNSYLVANIA 19104

215-243-1600

April 14, 1992

'92 APR 17 AM 11:35

To the Members of The American Law Institute:

EXECUTIVE SECRETARIAT

The Institute will return to Washington, D.C. for its 69th Annual Meeting, which will convene at The Mayflower on May 12, 13, 14, and 15, 1992.

Drafts to be submitted for consideration include the Proposed Final Draft of Principles of Corporate Governance; Tentative Draft No. 3 of the Complex Litigation Project; Tentative Draft Nos. 4 and 5 of the Restatement of the Law Governing Lawyers; Tentative Draft No. 2 of the Restatement of Property--Security (Mortgages); and Tentative Draft No. 1 of the Restatement of Suretyship. In addition, there will be a report on the Federal Income Tax Project's Study of Integration of the Individual and Corporate Income Taxes.

The drafts have all been mailed to the membership, and most should already be in your hands. The Reporters will welcome criticism, suggestions, and proposed amendments in advance of the Meeting.

The opening session on Tuesday morning will begin with remarks by Chief Justice William H. Rehnquist. A luncheon and colloquium for the particular benefit of new members will also be held on Tuesday; any other members who may wish to attend are invited to do so. Former Attorney General Elliot Lee Richardson will be the speaker at a luncheon on Wednesday honoring new and life members, to which all members are welcome. Also on Wednesday there will be a tour, which will include a luncheon, for the spouses and guests of members to Annapolis, Maryland, and on Wednesday evening the Council will receive members and guests for a buffet supper at the Library of Congress. Luncheons for members are scheduled for both Thursday and Friday; Secretary of Labor Lynn M. Martin will address the Thursday luncheon, and Robert M. Gates, the Director of Central Intelligence, will speak off the record on Friday.

The Institute's Annual Dinner (black tie) will be held on Thursday evening, May 14. The speaker will be Justice Harry A. Blackmun.

Enclosed are the program and acceptance form, as well as the memorandum on the scope of review for Corporate Governance mentioned on page 13 of the program. I look forward to seeing you in Washington.

Sincerely,


Geoffrey C. Hazard Jr.
Director

Enclosures

THE AMERICAN LAW INSTITUTE

4025 CHESTNUT STREET
PHILADELPHIA, PENNSYLVANIA 19104
215-243-1600

ROSWELL B. PERKINS
PRESIDENT

April 13, 1992

To Members of The American Law Institute:

Ground Rules for Discussion of Proposed Final Draft of Principles of Corporate Governance at 1992 Annual Meeting

I am sending this memorandum to you in advance of the Annual Meeting in the interests of an orderly and expeditious discussion of the Proposed Final Draft on May 12 and 13.

1. Attendance at the Corporate Governance Sessions

It is to be hoped that this will be the final Annual Meeting that discusses Corporate Governance. If we finish the job well at the Annual Meeting, I believe we will have accomplished a very major jurisprudential task.

I repeat what I said in the *ALI Reporter* last year:

"We count on a broad representation of our membership at all Annual Meetings in order to assure the objectivity and disinterestedness which have been cornerstones of the ALI tradition and its effectiveness."

A major campaign is underway to assure high attendance on May 12 and 13 by members who are corporate practitioners. Such an attendance is to be applauded, since the corporate bar clearly has expertise and special insights into the issues. However, it is important that this effort not result in an imbalance of representation at the meeting. The ALI has been built on the premise that generalists, such as judges and general practitioners, and also practitioners and academics who may concentrate in other fields, are critical in formulating balanced Institute positions.

Accordingly, I urge that all members make every possible effort to attend and to be present when the most important issues are discussed and voted on, as described in section 2 below.

2. Fixed Time for Most Important Debate and Motions

Based on numerous discussions and many communications, it is clear that the most critical issue in the Proposed Final Draft is the standard of judicial review applicable to a determination by the board of directors or a committee of the board (whether in response to a shareholder demand to commence litigation or after the action has been filed) that a proposed or pending action would be or is contrary to the best interests of the corporation. The shareholder litigation at issue is limited to proceedings against top officers or directors.

Because of the close interrelationship of §§ 7.04, 7.08, 7.09, 7.10 and 7.13, as applied to these situations, we propose to discuss these sections together, commencing at *8:30 A.M. on Wednesday, May 13*. The Reporters would present these sections as an integrated group. Any motions relating to those sections will thereupon be in order.

The voting on the most important motion or motions should take place *between 10:30 A.M. and 12:30 P.M. on Wednesday, May 13*. Thus, these sections will be in the nature of a "special order," to be debated and voted on irrespective of where we stand at the end of Tuesday in relation to other sections.

Of course, the discussion on these sections could continue into the Wednesday afternoon session, but we shall make every effort to vote on the key motion or motions no later than 12:30 P.M.

3. Early Submission of Motions to Amend

In the interests of orderly debate and maximum understanding on the part of the membership, *members should submit any motions to amend in writing in advance* of the meeting to the Philadelphia office (attention of Paul A. Wolkin, Executive Vice President).

Any motion may be accompanied by a brief supporting statement by the member making the motion (*in no event to exceed three single-spaced 8½ × 11 pages for the supporting statement*). A motion received at the Philadelphia office by the close of business on *Wednesday, April 22*, will be mailed to all members on Friday, May 1. (The Reporters will be given the opportunity to attach to any motion and its supporting statement any statement concerning the particular motion that they wish to make — also not to exceed three pages per motion).

Any motion that is received at the Philadelphia office by the close of business on *Wednesday, May 6*, will be duplicated by the Institute and placed on a table in the Registration Room at the Annual Meeting.

Motions made from the floor that have not been made available to all members present in written form are discouraged but not precluded.

4. *Categories of Material in Proposed Final Draft*

The material in the Proposed Final Draft falls into three broad categories:

- (1) Revisions of Chapters 1 and 2 of Part VII and new or revised ratification provisions in Part V;
- (2) Other changes in T.D. 11 (made since the 1991 Annual Meeting) deemed by the Council to be of sufficient significance to warrant permitting discussion and, if necessary, voting; and
- (3) Material as to which there has been no change since T.D. 11 and changes in T.D. 11 which the Council deems to be insignificant.

These categories are discussed further below.

5. *Category 1: Ratification in Part V and Chapters 1 and 2 of Part VII*

At the 1991 Annual Meeting we had only "black letter" for Chapters 1 and 2 of Part VII, and that "black letter" text was set forth in the Appendix to Tentative Draft No. 11. In addition, the resolution approving T.D. 11 expressly carved out issues of ratification within the scope of Part V. (It was recognized that there is an interrelationship between ratification and dismissal of shareholder derivative litigation.)

We will take up the ratification provisions of Part V sometime Tuesday, and hopefully dispose of them within an hour. The particular Sections and Subsections wherein there is new or revised material of significance dealing with ratification (including commentary relating to the black-letter changes) are:

§ 5.02(a)(2)(C)

§ 5.03(a)(3) and (b)

§ 5.04(a)(4) and commentary to § 5.04(a) dealing with ratification

§ 5.10(b)

This part of our discussion will be limited to these subsections and, more specifically, to the new or revised material dealing with ratification.

Late on Tuesday we will move to Chapters 1 and 2 of Part VII. Chapter 1 is entitled "The Derivative Action" and Chapter 2 is entitled "Recovery for Breach of Duty." The text falls into two subcategories:

- A. Sections previously approved and which have not been substantially revised since their prior approval at an Annual Meeting; and
- B. Sections substantially revised since their prior approval at an Annual Meeting.

Subcategory A: In subcategory A are the following:

Chapter 1

§ 7.01 Direct and Derivative Actions Distinguished.

§ 7.02. Standing to Commence and Maintain a Derivative Action.

§ 7.03. Exhaustion of Intercompany Remedies: the Demand Rule.

§ 7.11. Dismissal of a Derivative Action Based Upon Action by the Shareholders.

§ 7.12. Special Panel or Special Committee Members.

§ 7.14. Settlement of a Derivative Action by Agreement Between the Plaintiff and a Defendant.

§ 7.15. Settlement of a Derivative Action Without the Agreement of the Plaintiff.

§ 7.16. Disposition of Recovery in a Derivative Action.

§ 7.17. Plaintiff's Attorney's Fees and Expenses.

Chapter 2

§ 7.18. Recovery Resulting from a Breach of Duty: General Rules.

§ 7.19. Limitation on Damages for Certain Violations of the Duty of Care.

As to the Sections listed above, we will be operating under the same ground rules as we did at the 1991 Annual Meeting with respect to Parts II through VI. More specifically, this is the "opportunity to revisit" that was promised when we first started voting on the project. However, we expressed the strong hope last year, and we do again, that the focus will be solely on points which

"(a) have emerged as a result of the interplay between [the above-listed sections and other sections] – i.e., matters arising out of other parts of the project;

"(b) have emerged from new statutes, judicial decisions, probing legal or empirical factual analysis, or other developments which might be deemed significant to the Institute's deliberations concerning evolving legal principles; or

"(c) can be classified as matters overlooked or misapprehended."

As we suggested last year, there is little need for any revisitation of the above-listed Sections by reason of their interplay with other sections since they (unlike Parts II through VI) were approved by the membership at a time when the basic structure and general content of the entire project were known.

Subcategory B: The Sections that have been substantially revised since their prior approval at an Annual Meeting are the following Sections of Chapter 1:

§ 7.04. Pleading, Procedure, and Costs in a Derivative Action.

§ 7.05. Board or Committee Authority in Regard to a Derivative Action.

§ 7.06. Authority of Court to Stay a Derivative Action.

§ 7.07. Dismissal of a Derivative Action Based on a Motion Requesting Dismissal by the Board or a Committee: General Statement.

§ 7.08. Dismissal of a Derivative Action Against Directors, Senior Executives, Controlling Persons, or Associates Based on a Motion Requesting Dismissal by the Board or a Committee.

§ 7.09. Procedures for Requesting Dismissal of a Derivative Action.

§ 7.10. Standard of Judicial Review with Regard to a Board or Committee Motion Requesting Dismissal of a Derivative Action Under § 7.08.

§ 7.13. Judicial Procedures on Motions to Dismiss a Derivative Action Under §§ 7.08 or 7.11.

While many of the concepts of these Sections remain unchanged from those previously approved by the membership, there have been some significant substan-

tive changes since their prior approval. These changes are summarized in the memorandum by the Reporters that accompanied the Proposed Final Draft.

As indicated under heading 2 above, §§ 7.04, 7.08, 7.09, 7.10 and 7.13 will be discussed commencing at 8:30 A.M. on Wednesday, with voting on the key motions anticipated between 10:30 A.M. and 12:30 P.M.

6. *Category 2. Other Changes in T.D. 11 Deemed by the Council to Be Significant*

The resolution adopted at the 1991 Annual meeting approving T.D. 11 stated clearly that, with specified exceptions, T.D. 11 would *not* be brought back this year for discussion and voting, unless the Council so determined. The Council has determined that the Reporters' Memorandum, dated March 24, accompanying the Proposed Final Draft, commencing with the heading "Part I" on page 2, should serve as the guide as to what changes are of sufficient significance to view as open for discussion and, if necessary, voting at the Annual Meeting.

7. *Category 3. No Changes or Insignificant Changes in T.D. 11*

Most of T.D. 11 has been unchanged as a result of the promised "revisitation" that we conducted at the 1991 Annual Meeting. Accordingly, we will not reopen material not mentioned in the Reporters' Memorandum. However, the Council has granted the Chair discretion to entertain discussion of a change made in the text of T.D. 11 if a member makes a convincing case that a change made since the 1991 Annual Meeting is in fact significant, even though not referred to in the Reporters' Memorandum.

Such a case *should be made in writing* to the President, addressed at the Philadelphia office, no later than May 6, 1992.

8. *Motion to Be Made at the End of the Discussion*

The Council's intent and hope is that the discussion will end on Wednesday with the adoption of the following resolution:

"RESOLVED, that the Proposed Final Draft of the *Principles of Corporate Governance: Analysis and Recommendations* is approved, with such changes as may be required by amendments adopted during the discussion and such other changes approved by the Council as are consistent with the discussion at this Annual Meeting, and, subject to the approval of the Council, publication is hereby authorized."

9. *Parliamentary Status*

I am making this statement in the exercise of the powers given to me by Council Resolution No. 3478, adopted in 1986, as a supplement to the agenda item for the Corporate Governance Project as set forth in the Program of the Annual Meeting. The statement has been approved by the Council. Motions inconsistent with the agenda (such as a motion to table the Project or to put it over until the next Annual Meeting) will be ruled out of order. However, a failure of the motion of approval referred to under heading 8 above would, of course, require further action by the Institute, as determined by the Council.

10. *Reminder as to Relationship of Action by the Members and Action by the Council*

Our Bylaws require that any publication purporting to state a position of the Institute must be approved by *both* the Council and the membership. Article V, Section 1. Thus, any amendments to the text of the Proposed Final Draft that are adopted by the membership must be brought back to the Council (which plans to meet in October and December of 1992) for concurrence or non-concurrence. The Council would have a number of options, including the following (among others):

- (a) to accept the amendment and approve any modifications to the Comments that would be required to make the Comments consistent with the amendment;
- (b) to develop a "compromise" proposal and bring it back to the membership in 1993;
- (c) to reject the amendment but to print both the Council version and the "membership" version of the particular text, together with an explanatory note and a report on the floor vote; or
- (d) to reject the amendment and ask the membership for a second vote in 1993 on the Council version.

11. *Closing Comment*


In closing, perhaps I should repeat the comment I made at the opening of the discussion of Corporate Governance at the 1991 Annual Meeting:

"Above all, let us remember that nothing is perfection. We all know, as judges writing judicial opinions, as academics writing law review articles or casebooks, or as practicing lawyers writing contracts and briefs, there is no end if perfection is thought to be the goal. Perfection cannot be the goal, particularly when people will differ over what constitutes perfection. Life is finite. This document will lose its life if it is held out too long for tinkering. There can be a fine line between significant improvement and comma chasing. I ask you to use your very best judgment in helping the Institute to stay on the sensible side of that line and help us to finish our job."

As a part of the above plea, let me suggest that written comments that the Reporters can study in advance of the meeting are *very helpful*, even in the category of "comma chasing," and the time of the entire membership will then not be wasted on small matters.

Thank you for your patience!

Fax for ALI office:
(215) 243-1664


Roswell B. Perkins
President

105704e2

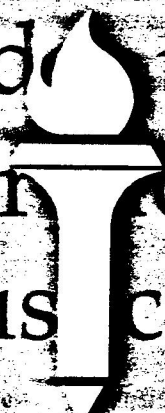
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scientific legal work.

THE AMERICAN
LAW INSTITUTE

1992 PROGRAM

SIXTY-NINTH ANNUAL MEETING

MAY 12-15, 1992
WASHINGTON, D.C.



The particular business and objects of the society are educational, and are to promote the clarification and simplification of the law and its better adaptation to social needs, to secure the better administration of justice, and to encourage and carry on scholarly and scientific legal work.

*From the
Certificate of Incorporation
of The American Law Institute*

THE AMERICAN LAW INSTITUTE

69th Annual Meeting

May 12-15, 1992
The Mayflower • Washington, D.C.

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Registration page 5

Hospitality page 5

Opening Session page 6

Topics for Discussion page 6

MCLE Credit page 7

Special Functions page 7

Substantive Agenda page 13

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Members of The American Law Institute page 21

PLEASE GIVE THIS TO YOUR SPOUSE

A visit to Annapolis, Maryland, has been arranged for spouses of members and guests on Wednesday, May 13. An hour's drive from Washington, this beautiful colonial city is said to have the greatest concentration of 18th century buildings in the United States.

The tour will encompass the Maryland State House, the oldest in continuous legislative use in the United States; the Governor's Mansion, the residence of Maryland's chief executives for more than 100 years; the elegant Georgian mansion that was the home of William Paca, a signer of the Declaration of Independence and former Governor of Maryland; and the picturesque City Dock, which will afford an opportunity to browse and shop in a variety of attractive waterfront galleries and boutiques. A special luncheon has been arranged for the group in the Officer's Club of the United States Naval Academy.

Those participating in the tour are requested to assemble in the East Room of The Mayflower at 8:15 a.m. Coffee and muffins will be served. Tickets are \$65 and include round-trip transportation from The Mayflower, admissions, and the luncheon. Buses will depart at 8:45 a.m. from the DeSales Street entrance of The Mayflower and will return around 4:00 p.m. Comfortable clothing and walking shoes are recommended.

69th Annual Meeting of The American Law Institute

Re: Hotel Accommodations

There are currently no vacancies available at The Mayflower Hotel. Please call the following toll-free number for assistance in securing room reservations:

Washington, DC Accommodations
1-800 554-2220

202/289-2220

Fax: 202/483-4436

69th ANNUAL MEETING

The American Law Institute

I am unable to attend the 69th Annual Meeting of The American Law Institute in Washington, DC on May 12, 13, 14, and 15, 1992, and I appoint:

NAME _____
(Please print)

ADDRESS _____
(Please give full mailing address)

CITY _____ STATE _____ ZIP _____

to represent _____
(Fill in name of Court, Association or Law School)

(SIGNED) _____

ADDRESS _____

CITY _____ STATE _____ ZIP _____

DEPARTMENT OF JUSTICE
EXECUTIVE SECRETARIAT CONTROL DATA SHEET

From: PORT CITY PRESS, INC., BALTIMORE, MD
To: AG. ODD: NONE
Date Received: 04-14-92 Date Due: NONE Control #: X92041505872
Subject & Date
04-08-92 UNSIGNED LETTER TO THE RECIPIENTS OF THE AMERICAN
LAW INSTITUTE PROPOSED FINAL DRAFT OF PRINCIPLES OF
CORPORATE GOVERNANCE: ANALYSIS AND RECOMMENDATIONS;
ENCLOSING A COMMENT SHEET WHICH WAS INADVERTENTLY OMITTED
WHEN THE DRAFT WAS MAILED.

SEE EXEC. SEC. 92040605449 - CONTROL SHEET ATTACHED.

	Referred To:	Date:		Referred To:	Date:	
(1)	OAG;	04-15-92	(5)			W/IN:
(2)			(6)			PRTY:
(3)			(7)			1
(4)			(8)			OPR:
	INTERIM BY:			DATE:		MAU
	Sig. For:	NONE		Date Released:		

Remarks
ORIGINAL COMMENT SHEET TO OAG.

Other Remarks:

~~FILE~~: INSTITUTES/AMERICAN LAW INSTITUTE

REMOVE THIS CONTROL SHEET PRIOR TO FILING AND DISPOSE OF APPROPRIATELY

8 APRIL 92



PORT CITY PRESS, INC.

THE COMMITMENT COMPANY®

Subsidiary of Judd's Incorporated

April 8, 1992

To the recipients of The American Law Institute Proposed Final Draft of Principles of Corporate Governance: Analysis and Recommendations:

The enclosed comments sheet, which should have been inserted in the copy of the draft previously sent to you, was inadvertently omitted when the draft was mailed by us.

We regret any inconvenience this error may have caused you.

Port City Press, Inc.

RECEIVED
OFFICE OF THE
EXECUTIVE SECRETARY
APR 14 AM 10:04

To the Chief Reporter for Principles of Corporate Governance:
Analysis and Recommendations
c/o The American Law Institute
4025 Chestnut Street
Philadelphia, Pennsylvania 19104-3099

From: _____
NAME

ADDRESS

CITY STATE ZIP

Comments on Proposed Final Draft

DEPARTMENT OF JUSTICE
EXECUTIVE SECRETARIAT CONTROL DATA SHEET

From: COUNCIL TO THE MEMBERS OF THE AMERICAN LAW INSTITUTE
To: AG. ODD: NONE
Date Received: 04-06-92 Date Due: NONE Control #: X92040605449
Subject & Date
SUBMITTING A COPY OF THE PROPOSED FINAL DRAFT OF THE
PRINCIPLES OF CORPORATE GOVERNANCE: ANALYSIS AND
RECOMMENDATIONS AND A COPY OF THE TENTATIVE DRAFT NO. 3 OF
THE COMPLEX LITIGATION PROJECT FOR DISCUSSION AT THE
69TH ANNUAL MEETING ON MAY 12-15, 1992.

SEE EXEC. SEC. 91112119538 AND 91120920305 - CONTROL
SHEETS ATTACHED.

	Referred To:	Date:	Referred To:	Date:	
(1)	OAG;	04-06-92	(5)		W/IN:
(2)			(6)		
(3)			(7)		PRTY:
(4)			(8)		1
	INTERIM BY:		DATE:		OPR:
	Sig. For: NONE		Date Released:		MAU

Remarks
ORIGINALS TO OAG.

Other Remarks:

/FILE: INSTITUTES/AMERICAN LAW INSTITUTE

REMOVE THIS CONTROL SHEET PRIOR TO FILING AND DISPOSE OF APPROPRIATELY

PLEASE BRING THIS DRAFT TO THE ANNUAL MEETING

As of the date of publication, this Draft has not been considered by the members of The American Law Institute and does not represent the position of the Institute on any of the issues with which it deals. The action, if any, taken by the members with respect to this Draft may be ascertained by consulting the Annual Proceedings of the Institute, which are published following each Annual Meeting.

The American Law Institute

**PRINCIPLES OF CORPORATE GOVERNANCE:
ANALYSIS AND RECOMMENDATIONS**

Proposed Final Draft

(March 31, 1992)

SUBJECTS COVERED:

- Part I. Definitions
- Part II. The Objective and Conduct of the Corporation
- Part III. Corporate Structure: Functions and Powers
of Directors and Officers; Audit Committee in Large
Publicly Held Corporations
- Part III-A. Recommendations of Corporate Practice Concerning
the Board and the Principal Oversight Committees
- Part IV. Duty of Care and the Business Judgment Rule
- Part V. Duty of Fair Dealing
- Part VI. Role of Directors and Shareholders
in Transactions in Control and Tender Offers
- Part VII. Remedies

Submitted by the Council to the Members of The American Law Institute
for Discussion at the Sixty-Ninth Annual Meeting
on May 12, 13, 14, and 15, 1992

The Executive Office
THE AMERICAN LAW INSTITUTE
4025 Chestnut Street
Philadelphia, Pa. 19104-3099

PLEASE BRING THIS DRAFT TO THE ANNUAL MEETING

As of the date of publication, this Draft has not been considered by the members of The American Law Institute and does not represent the position of the Institute on any of the issues with which it deals. The action, if any, taken by the members with respect to this Draft may be ascertained by consulting the Annual Proceedings of the Institute, which are published following each Annual Meeting.

The American Law Institute

COMPLEX LITIGATION PROJECT

Tentative Draft No. 3

(March 31, 1992)

SUBJECTS COVERED:

Chapter 4. Consolidation in State Courts

Chapter 6. Choice of Law

Appendix A. Reporter's Study: A Model System for State
to State Transfer and Consolidation

Appendix B. Uniform Transfer of Litigation Act

Submitted by the Council to the Members of The American Law Institute
for Discussion at the Sixty-Ninth Annual Meeting
on May 12, 13, 14, and 15, 1992

The Executive Office
THE AMERICAN LAW INSTITUTE
4025 Chestnut Street
Philadelphia, Pa. 19104-3099

DEPARTMENT OF JUSTICE
EXECUTIVE SECRETARIAT CONTROL DATA SHEET

From: PERKINS, ROSWELL B., PRES., THE AMERICAN LAW INSTITUTE, PA
To: MEMBERS OF AMERICAN LAW INSTITUTE (AG.) ODD: NONE
Date Received: 03-23-92 Date Due: NONE Control #: X92032304623
Subject & Date

03-18-92 LETTER, ON BEHALF OF THE AMERICAN LAW INSTITUTE,
REQUESTING FINANCIAL SUPPORT TO HELP FUND THE
A. JAMES CASNER REPORTER'S CHAIR. THIS CHAIR IS BEING
ESTABLISHED TO HONOR THE MEMORY OF HARVARD LAW SCHOOL
PROFESSOR A. JAMES CASNER, WHO, AS A REPORTER AND ADVISER
FOR VARIOUS INSTITUTE PROJECTS FOR OVER HALF A CENTURY, MADE
PROFOUND CONTRIBUTIONS TO THE DEVELOPMENT OF THE LAW OF
PROPERTY, THE TAXATION OF TRUSTS AND ESTATES, AND ESTATE **

Referred To:	Date:	Referred To:	Date:	
(1) OAG;	03-23-92	(5)		W/IN:
(2)		(6)		
(3)		(7)		PRTY:
(4)		(8)		1P
INTERIM BY:		DATE:		OPR:
Sig. For: OAG		Date Released:		MAU

Remarks

** PLANNING. ENCLOSES A BROCHURE ON THE CASNER CHAIR AND A
GIFT/PLEDGE CARD.

(1) TO OAG FOR ACTION, WITH ORIGINAL ENCLOSURES.

Other Remarks:

✓ FILE: INSTITUTES/AMERICAN LAW INSTITUTE

REMOVE THIS CONTROL SHEET PRIOR TO FILING AND DISPOSE OF APPROPRIATELY

18 March 92

THE AMERICAN LAW INSTITUTE
4025 CHESTNUT STREET, PHILADELPHIA, PA 19104-3099 (215) 243-1600

COMMITTEE FOR THE A. JAMES CASNER REPORTER'S CHAIR

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Seattle, WA

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WILLIAM D. ZABEL
New York, NY

March 18, 1992

**To Each Member of The
American Law Institute:**

I am writing to you on behalf of The American Law Institute to ask for your financial support to help fund the A. James Casner Reporter's Chair. This Chair is being established to honor the memory of Harvard Law School Professor A. James Casner, who, as a Reporter and Adviser for various Institute projects for over half a century, made profound contributions to the development of the law of property, the taxation of trusts and estates, and estate planning.

The Institute's Council has determined that the establishment of an endowed Reporter's Chair is an appropriate way both to honor Professor Casner and to assist in assuring that future work of the Institute will maintain the standards of excellence he exemplified over so many years. A goal of at least \$300,000 has been set, of which \$135,000 has already been contributed or pledged. The fund will be dedicated to sustaining the work of the Reporter designated from time to time by the Council to hold the Chair.

Members of the Council of the Institute have led the way with generous personal contributions. Professor Casner's two sons have also wholeheartedly supported the effort. Solicitations have recently been sent to the Advisers and Consultants for all of the ALI tax and property projects with which Jim was involved over the years.

Enclosed are a brochure on the Casner Chair and a gift/pledge card that we hope you will complete and send back to the Institute.

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Boston, MA
R. AMMI CUTTER
Boston, MA
ERWIN N. GRISWOLD
Washington, DC
MILTON KATZ
Cambridge, MA
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Campaign

Coordinator
HELENE COHEN
Philadelphia, PA
215/243-1666
FAX: 215/243-1664

Page 2

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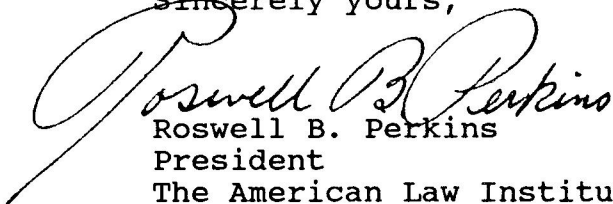
'92 MAR 23 A10:45

EXECUTIVE SECRETARIAT

We deeply appreciate your participation as a member of the Institute and your past financial support of the Institute. We hope that you will take this opportunity to make a tax-deductible contribution to memorialize our good friend and colleague, Jim Casner.

Best wishes.

Sincerely yours,



Roswell B. Perkins
President
The American Law Institute

Enclosures

P.S. If you know of an organization, law firm, or individual who has benefited from Professor Casner's teachings and might want to take the opportunity of contributing to this memorial, we would be most grateful for this information.



A. James Casner
1907-1990

THE AMERICAN LAW INSTITUTE

THE A. JAMES CASNER REPORTER'S CHAIR

THE A. JAMES CASNER CHAIR

The American Law Institute's A. James Casner Chair, to be held by a Reporter designated from time to time by the Institute's Council, is being established in memory of Professor A. James Casner of Harvard Law School. Professor Casner's career as a Reporter and Adviser for Institute projects spanned more than half a century. During that time his efforts made profound contributions to the development of the law of property, the taxation of trusts and estates, and estate planning.

Professor Casner's affiliation with the Institute began in 1936 when he was designated a Special Reporter and member of the Advisory Committee for portions of the original Restatement of Property. He subsequently served as an Adviser for the Restatement, Second, of Trusts and as Reporter for the Institute's highly influential project on Federal Estate and Gift Taxation. In 1970

he became the Reporter for the Restatement, Second, of Property. Over the next 20 years in that capacity he produced two volumes on the law of Landlord and Tenant and four on Donative Transfers, the last of which was completed and approved by the Institute shortly before his death in 1990 at the age of 83. During this period he was also the Reporter for the Federal Income Tax Project's study of Subchapter J of the Internal Revenue Code, a Consultant for the Study on Generation-Skipping Transfers Under the Federal Estate Tax, and Consultant to the Reporter for Restatement Third, Property (Servitudes).

In addition to his work for the Institute, Professor Casner was editor-in-chief of *The American Law of Property* (1952), co-author of *Cases and Text on Property* (3d ed. 1984), and author of the multivolume treatise, *Estate Planning* (5th ed. 1984-1987). He joined the faculty of Harvard Law School in 1939 after having previously

taught at the University of Illinois and the University of Maryland, and at the time of his death he was the Austin Wakeman Scott Professor of Law Emeritus at Harvard. He complemented his teaching and research with an active practice in the field of estate planning. An enthusiastic supporter of continuing legal education, he frequently participated in CLE programs throughout the country and for nearly 25 years himself directed the Program of Instruction for Lawyers offered each summer at Harvard.

Professor Casner demonstrated the highest competence and integrity as a legal scholar, analyst, and practitioner, and had an abiding interest in law reform. His drafting and persuasive skills are legendary. His presentations – frequently punctuated by his provocative wit – always enlivened meetings of the Institute. He inspired admiration and devotion among his students, his fellow practitioners, and his academic colleagues.

The Casner Chair constitutes a fitting and living memorial to one of the Institute's most distinguished and respected members.

THE NEED FOR AN ENDOWED CHAIR

Although the administration and most of the work of the Institute are funded from other sources – including membership dues, sales of bound volumes and tentative drafts, and foundation and other project grants – endowment funds are vital to the Institute's continued success.

A reportorial chair represents an important and special part of the Institute's endowment. While providing important financial support to a project, an endowed chair at the same time honors the person whose name it bears and recognizes and sustains the work of the Reporter designated to hold it. Endowment of the Casner

Chair, for which a goal of \$300,000 has been set, will assist the Institute in assuring that its future work will maintain the standards of excellence manifested over so many years by Professor Casner.

FUNDING THE CHAIR

Gifts of Cash

Checks should be made payable to The American Law Institute.

Pledges

Donors may prefer to extend payments on their commitments over a period of time, usually two or three years.

Gifts of Securities

Donors are entitled to a charitable deduction equal to the fair market value of the stock on the date of the gift.

To expedite gifts of securities and for further information about giving to The American Law Institute, please contact:

Paul Wolkin or Helene Cohen
The American Law Institute
4025 Chestnut Street
Philadelphia, PA 19104-3099
(215) 243-1600

Chair: Malcolm A. Moore, Seattle, WA
Vice Chair: Ernest J. Sargeant, Boston, MA

The American Law Institute
A. JAMES CASNER REPORTER'S CHAIR

☐ **Gifts of Cash** (Checks should be made payable to The American Law Institute.)
Amount \$ _____.

☐ **Pledges**
Amount \$ _____. Enclosed \$ _____.
Please indicate your payment schedule to complete your pledge.
\$ _____ on _____, 19____. \$ _____ on _____, 19____.

☐ **Gifts of Securities** _____

☐ **Matching Gifts** _____

Donor's Signature

Date

Continued on other side

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FOIA # 60048 (URTS 16457) DOCID:
70106686

1992

INSTITUTES
A. Philip Randolph Institute

DEPARTMENT OF JUSTICE
EXECUTIVE SECRETARIAT CONTROL DATA SHEET

From: HILL, NORMAN, PRES., A. PHILIP RANDOLPH INSTITUTE, WASH., DC
To: AG. ODD: 07-09-92
Date Received: 06-23-92 Date Due: 07-09-92 Control #: X92062409554
Subject & Date

06-19-92 LETTER, ON BEHALF OF MORE THAN 150 CHAPTERS OF THE
A. PHILIP RANDOLPH INSTITUTE (APRI), URGING THE AG TO
OPPOSE THE SALE OF LTV MISSILES AND AIRCRAFT DIVISIONS TO
FRENCH GOVERNMENT-CONTROLLED THOMSON-CSF. PROVIDES REASONS
IN LETTER.

	Referred To:	Date:		Referred To:	Date:	
(1)	ATR;JAMES	06-24-92	(5)			W/IN:
(2)			(6)			
(3)			(7)			PRTY:
(4)			(8)			1Z
	INTERIM BY:			DATE:		OPR:
	Sig. For: ATR			Date Released: 08-03-92		MAU

Remarks

INFO CC: OAG, ASG, OIP.

(1) RETURN CONTROL SHEET WITH COPY OF SIGNED AND DATED
CONTROL SHEET TO EXEC. SEC., ROOM 4400-AA.

08-03-92 ATR REPLIED BY LETTER DATED 07-31-92. (TJ)

Other Remarks:

OLA CONTACT:

FILE: INSTITUTES/A. PHILIP RANDOLPH INSTITUTE

CROSS REFERENCES:

1. ACQUISITIONS/Foreign

REMOVE THIS CONTROL SHEET PRIOR TO FILING AND DISPOSE OF APPROPRIATELY

19 JUNE 92

[2506y]-



U.S. Department of Justice

Antitrust Division

JAMES
3107M
GIDLEY
3113M

STARK

3264M

HAND

FILIPPINI

3118M

LEG. UNIT

3118M

CHRON.

Office of the Assistant Attorney General

Washington, D.C. 20530

JUL 31 1992

Mr. Norman Hill
President
A. Philip Randolph Institute
1444 "I" Street, N.W.
Suite 300
Washington, DC 20005

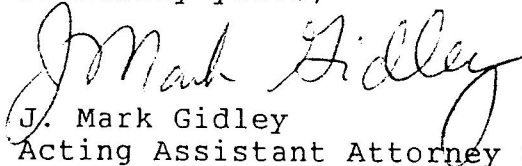
Dear Mr. Hill:

This letter responds to your letter of June 19, 1992, to the Attorney General concerning the proposed acquisition by Thomson-CSF of LTV Corporation's Missiles Division.

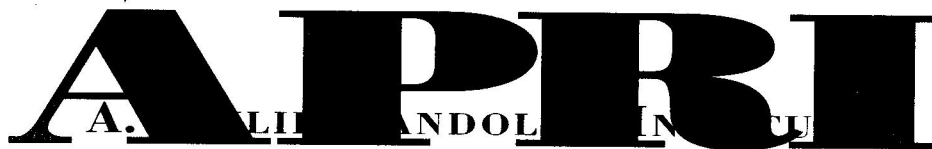
The Department of Justice is a member of the Committee on Foreign Investment in the United States ("CFIUS"). The President delegated to CFIUS the authority under the Exon-Florio provision of the Defense Production Act to receive notices of proposed acquisitions by foreign firms of United States assets and, as appropriate, to consider whether a proposed transaction would threaten to impair the national security. Following its review, CFIUS sends a report to the President stating either the unanimous recommendation of the CFIUS member agencies that the proposed transaction be approved or prohibited, or, where there is no unanimity, the report sets forth the agencies' differing views and presents the issues for the President's decision. The President alone has the authority to suspend or prohibit a transaction under Exon-Florio.

In early July, Thomson-CSF requested that the prior notice of its proposed acquisition of LTV's Missles Division to CFIUS be withdrawn, and on July 6, CFIUS granted Thomson's withdrawal request. On behalf of the Attorney General, I thank you for writing.

Sincerely yours,


J. Mark Gidley
Acting Assistant Attorney General

Leon Lyñch
Chair
Norman Hill
President
Eugene Upshaw
Vice President
Barbara Van Blake
Vice President
Albert Shankar
Treasurer
Edgar Romney
Secretary
Frederick O'Neal
Vice President Emeritus



1444 "I" Street, N.W., Suite 300, Washington, D.C. 20005
202/289-2774 FAX: 202/371-0168

June 19, 1992

Mr. William Barr
Attorney General
Dept. of Justice
10th & Constitution Ave., NW
Washington, D.C. 20530

Dear Mr. Barr:

On behalf of more than 150 chapters of the A. Philip Randolph Institute (APRI), I am writing to urge you to oppose the sale of LTV Missiles and Aircraft Divisions to French government-controlled Thomson-CSF. We are convinced that the proposed sale of LTV to Thomson-CSF would result in the loss of jobs and benefits to many of our members.

APRI represents 2 million African-American trade unionists. Many APRI members are members of the United Auto Workers -- the union which represents LTV workers. These dedicated workers have toiled long and hard to build a strong United States national defense. The proposed sale of LTV to French government-controlled Thomson-CSF would undermine years of hard work and set a dangerous precedent for the future of American jobs.

Preserving the jobs and retiree and pension benefits of African-Americans, in this troubled economic climate, is a top priority for APRI. The defense industry has been a source of job opportunities for African-Americans since 1941, when the great black labor leader A. Philip Randolph forced President Roosevelt to ban discrimination in the industry.

Thomson-CSF has not agreed to abide by the collective bargaining agreement and retirement program as set forth recently in a five year collective bargaining agreement with the United Auto Workers (UAW). This refusal to comply with the comprehensive agreement threatens wages, benefits and job security of UAW-LTV workers. Thousands of LTV employees and retirees count on this agreement for financial and job stability. The proposed sale of LTV to Thomson-CSF does not provide for a stable future for these hardworking Americans. This is unacceptable.

Furthermore, Thomson-CSF has a history of shifting jobs from the United States to Europe. For example, in September 1991 Thomson moved production of the VT-1 missile from LTV facilities in Texas to the Euromissile consortium in France and Germany. As business leaves the country so do jobs.

Finally, if LTV is owned by French government-controlled Thomson-CSF, it is likely that the Department of Defense will not award LTV sensitive defense contracts for obvious

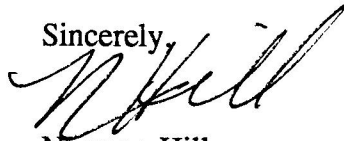
FOIA # 60048 (UITS 16457) DocId: 70106686 Page 4

Founded in 1965 by A. Philip Randolph (1889-1979) and Bayard Rustin (1912-1987)
To Fight for Racial Equality and Economic Justice. NARA-18-1003-A-002812

AMERICAN
OVERSIGHT

national security reasons, opting to award business to American companies. A lack of DOD contracts will result in loss of LTV jobs. I urge you to consider the threat posed by the sale of LTV to Thomson-CSF -- the threat to American jobs, pension benefits, and the stability of UAW-LTV workers and their families. I ask you to oppose this sale.

Sincerely,

A handwritten signature in black ink, appearing to read "N. Hill", written over the word "Sincerely,".

Norman Hill
President

1992

INSTITUTES
Bank Administration Institute

AMERICAN
OVERSIGHT

Screened by NARA (RD-F)
02-07-2019 FOIA # 60048 (URTS
16457) DOCID: 70106688

DEPARTMENT OF JUSTICE
EXECUTIVE SECRETARIAT CONTROL DATA SHEET

From: TAYLOR, DAVID VAN L., BANK ADMINISTRATION INSTITUTE, IL
To: AG. ODD: NONE
Date Received: 10-13-92 Date Due: NONE Control #: X92101414962
Subject & Date
10-06-92 LETTER ENCLOSING A COPY OF THE NEW CAPABILITIES
BROCHURE OF THE BANK ADMINISTRATION INSTITUTE (BAI) FOR THE
AG's REVIEW. ADVISES THAT THIS BROCHURE DESCRIBES BAI's
MISSION CONCERNING THE U.S. BANKING INDUSTRY.

Referred To:	Date:	Referred To:	Date:	
(1) OAG;	10-14-92	(5)		W/IN:
(2)		(6)		PRTY:
(3)		(7)		1Z
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INTERIM BY:		DATE:		EHZ
Sig. For: NONE		Date Released:		

Remarks

(1) FOR INFORMATION, W/ORIGINAL ENCLOSURE.

Other Remarks:

OLA CONTACT:

FILE: INSTITUTES/BANK ADMINISTRATION INSTITUTE

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6 OCTOBER 92

**BANK
ADMINISTRATION
INSTITUTE**

'92 OCT 13 11:47

EXECUTIVE

October 6, 1992

The Honorable William P. Barr
Attorney General
DEPARTMENT OF JUSTICE
10th and Constitution Avenue, NW
Washington, DC 20530

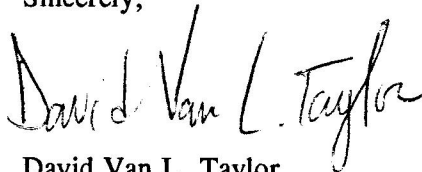
Dear Mr. Barr:

Bankers, regulators and observers of the financial services marketplace in the U. S. generally agree on one fundamental proposition — the banking industry will continue to face enormous challenges in the foreseeable future. Competition, technology and government actions will continue to test the leadership and professional capabilities of bankers throughout all sectors of this industry. That is why the demand for BAI's services is growing year by year and industry support for its broader program is rising.

BAI's mission is clear — to help member institutions become more profitable and efficient by enriching the expertise of their people and by improving the quality of their organization. This mission is described in broader terms in our new capabilities brochure which I have enclosed for your review.

We share a common interest in the health and profitability of the U. S. banking industry. Please do not hesitate to contact me whenever that interest may lead to opportunities to work together.

Sincerely,



David Van L. Taylor
Group Executive-The Center for
Banking Issues and Strategies

Enclosure

BAI

BANK ADMINISTRATION INSTITUTE

TO OUR BANKING FRIENDS:

Over the last seven decades, bankers nationwide have come to regard Bank Administration Institute as the premier resource for training, executive education, information services, publications, technical studies and emerging issues research. As the needs of banks and bankers have shifted over the years, BAI has consistently anticipated these changes and responded by broadening its capabilities.

But since our founding in 1924, our mission has remained constant: we help member institutions become more profitable and efficient by enriching the expertise of their people and by improving the quality of their organizations. We do not lobby, which permits us to maintain an objective frame of reference.

It is indeed a privilege to lead this respected national organization, where thousands of bankers regularly collaborate with our first-rate professional staff to produce these impressive results. Because of this close working relationship, BAI is able to focus on those issues of most significance to the financial services sector.

For banks and bankers to prosper in the 90s and beyond, they will be called upon to do a profoundly better job. They must lend more judiciously, be more efficient, increase customer orientation and value, and inspire higher levels of quality throughout their

operations. Those banks that excel will invest in their people and in their productivity. They will train, educate and nurture staff at all levels, building now for exceptional results in the future.

We understand this dynamic process and BAI stands ready to provide its extraordinary capabilities and experience to strengthen the performance of banks and bankers.

We look forward to sharing the bright future that awaits those who prepare today for tomorrow.



A handwritten signature in dark ink, reading "Luke Helms". The signature is fluid and cursive.

Luke Helms
Chairman of the Board
Bank Administration Institute
Chairman and Chief Executive Officer
Seafirst Corporation

August 28, 1992

LOOKING TO THE FUTURE

*I*n light of the enormous changes taking place in the banking environment, the Institute's Board of Directors regularly engages in strategic reviews and assessments of the organization's mission, goals and objectives. Over the past several years, this process has affirmed the central focus of BAI's core mission as the leading resource in banking for information, education and research.

Across the entire organization — banker advisors, the chapter network and staff — the focus for the future is on innovative services for bankers. Recognizing that change requires new skills and new strategies, BAI's mission has never been more sharply defined. As the shape of the banking system emerges over the next several years, BAI will be providing the management information, skills training and knowledge to enable bankers to meet the fierce demands of a new, more competitive environment.

The Institute was formed nearly 70 years ago by a group of bankers who recognized that organizations prosper in direct proportion to the knowledge and skills of their people. Success is more elusive today, and people play an even larger role in determining the measure of success that banks will attain. Looking ahead, we believe that the challenges of an industry in transition will create even greater demand on all banks for skilled professionals and innovative leaders. BAI will continue to direct its resources to creating and delivering the knowledge and information that are needed to give bankers a competitive advantage in the 90s and beyond.

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Subject & Date

12-92 LETTER ENCLOSING A BROCHURE ON THEIR SEMINAR
"A LOOK INSIDE POLICYMAKING IN THE EUROPEAN COMMUNITY,"
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A BEHIND-THE-SCENES LOOK AT THE CHANGING CONDITIONS IN
EUROPE AND HOPES DOJ WILL CONSIDER PARTICIPATING IN THE
SEMINAR.

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31 DECEMBER 92



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Center for Public Policy Education

92 DEC 11 10:19

December 1992

Dear Colleague:

The agricultural accord reached last month between the U.S. and the European Community marks only the beginning of future, complex talks. Telecommunications and financial services, among others, are possible areas of expansion for U.S. companies. Your company's executives can benefit from an enhanced understanding of the changes happening in Europe. Brookings seminar on **A Look Inside Policymaking in the European Community** will give your senior managers a behind-the-scenes look at the changing conditions in Europe.

This seminar will:

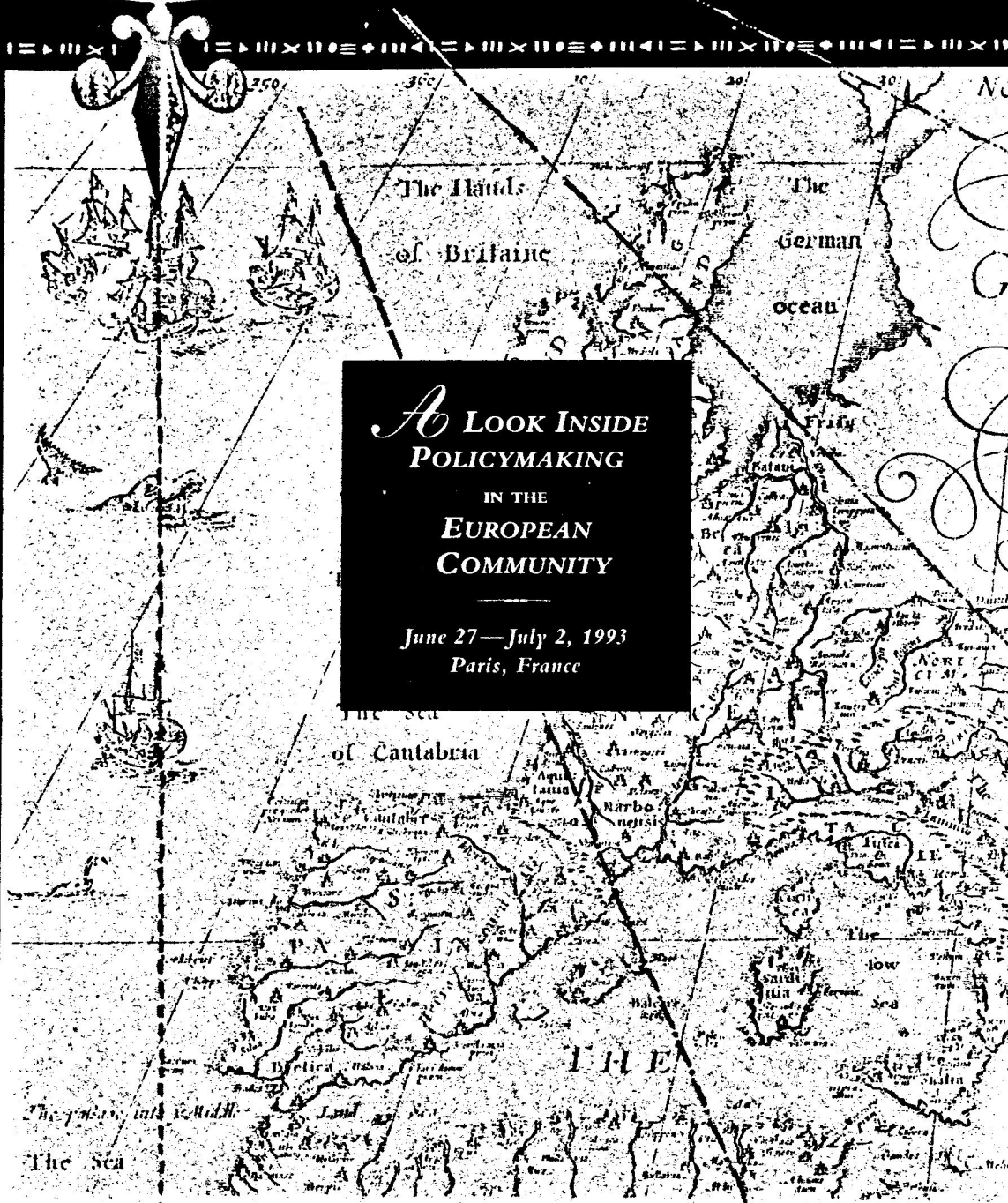
- Present diverse views from high-level government and industry officials and academic experts
- Explore the economic and political climate for American business in the region
- Provide opportunities to network with other Americans working abroad

A Look Inside Policymaking in the European Community, now in its ninth year, will be held in Paris, June 27-July 2, 1993. Many top managers have found participation in this seminar to be an invaluable experience. We hope you will consider having your executives join us in Europe.

Sincerely,

Lawrence J. Korb
Director

P.S. Register early and receive a 15% discount off of your tuition! For more information, call Margaret Halstead, Marketing Manager, at (202) 797-6299 or by fax (202) 797-6133.



A LOOK INSIDE
POLICYMAKING
IN THE
EUROPEAN
COMMUNITY

June 27—July 2, 1993
Paris, France

A NEW EUROPE IS EVOLVING... ARE YOU PREPARED?

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How to Compete in the New Europe

- What are the implications of European economic, monetary and political union for U. S. business?
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These developments in Western and Eastern Europe and the further steps required to carry out the Maastricht Treaty pose new challenges for American business. Europe offers opportunities as well as risks. To map out your strategy, attend the Brookings seminar on *A Look Inside Policymaking in the European Community*. This program features off-the-record discussions with European governmental policymakers and business leaders on the changing dynamics in Europe.

"The E.C. conference was superior on all counts. The agenda alerted the participant to a broad range of the many complexities of the internal politics of the E.C. and guidance to conducting successful business in the E.C. I recommend it to U.S. business leaders as an excellent primer to understanding the possibilities of the European Community."

Frank Farese
District Manager, AT&T

For More Information

For a preliminary agenda, call:
Margaret Halstead, Marketing Manager
The Brookings Institution
1775 Massachusetts Avenue, N.W.
Washington, D.C. 20036
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FAX: (202) 797-6133

For speaker information, contact:
Barbara Littell, Seminar Director
The Brookings Institution
Telephone: (202) 797-6267
Fax: (202) 797-6133

How Can Your Company Plan as a New Europe Evolves?

Planning business strategies has become even more challenging. American companies face many issues:

- Has the Maastricht Treaty controversy affected the goal of establishing Economic and Monetary Union by 1994?
- Does the confrontation over the Uruguay Round foretell a more effective trading system or an outbreak of trade wars among regional blocs?
- What are the positive and negative factors affecting the growth of the major European countries?
- What are the likely developments in Europe's efforts to achieve a defense identity and what role will NATO play in the future?
- How will EC social and labor policy affect U.S. business decisions?
- What new economic and commercial relationships are being formed between Western and Eastern Europe and what risks and opportunities do these present for U.S. business?

Brookings' seminar gives you an opportunity to answer these and many more questions about doing business in Europe.

Program Content and Speakers

Speakers will include senior officials of the European Commission, CEOs of European companies, and political officials from the member states of the European Community. Academic specialists, journalists, and executives of U.S. companies based in Europe will also share their expertise.

All sessions are informal and off the record with ample opportunity for questions and discussions. The program language is English. Highlights of last year's seminar include:

The 1992 Program and Trade Policy
Martin Wolf, Associate Editor,
The Financial Times

An Integrated Europe and World Trade
Renato Ruggiero, Member of the Board of Directors in Charge of International Relations, FIAT; former Italian Minister of Foreign Trade

Eastern Europe and the Community: Investment and Trade Issues
Mark Palmer, President and CEO, Central European Development Corp.; former U.S. Ambassador to Hungary

The European Community After 1992: A U.S. Perspective
James F. Dobbins, U.S. Ambassador to the European Community

Issues in Economic and Monetary Union
Wilfried Guth, Member, Supervisory Board; Former Chairman, Deutsche Bank, AG

Legal and Regulatory Policies in an Integrated Europe
Claus-Dieter Ehlermann, Director-General, Competition Policy, Commission of the European Communities

Role of the European Court and Legal Issues in European Integration
Judge David A. O. Edward, Court of Justice of the European Communities

Impact of European Integration on U.S. Business
Senior Executives, U.S. companies based in Europe

How Will You and Your Company Benefit?

Europe is in a state of flux. The EC's Single Market will become a reality in 1993 and the new democracies of Central and Eastern Europe are offering investment opportunities. It is an important time to assess your own strategies in Europe and plan for the future.

This Brookings seminar will give you the insight you need to:

- Obtain a sense of what is really happening in Europe and how economic and political union affect your corporate strategy.
- Facilitate business development activities through a new understanding of the business conditions in Western and Eastern Europe.
- Gain a competitive edge by obtaining the best information available on the future course of Europe.

You will come away better prepared to successfully operate in the new Europe.

Who Should Attend?

Senior corporate executives who have responsibility for:

- EUROPEAN MARKET
- BUSINESS DEVELOPMENT
- GENERAL MANAGEMENT
- INTERNATIONAL PUBLIC AFFAIRS
- INTERNATIONAL OPERATIONS
- STRATEGIC PLANNING OR ECONOMIC FORECASTING

The group is limited in size to facilitate discussion.

"I was looking for a general overview of what was going on in Europe with respect to how to take advantage of the changing environment to improve our business activities. This objective was met... An excellent program—very impressive speakers."

C. Michael Hamilton
Director of Finance, Eastman Kodak Co.

About Brookings

The Brookings Institution is a nonprofit, nonpartisan organization devoted to research, education, and publication on issues of domestic and foreign policy. As part of its educational mission, Brookings conducts seminars in many regions of the world including Eastern Europe, the former U.S.S.R., Japan and the People's Republic of China. Participants in these seminars explore the implications of the changing economic and political conditions for U.S. business interests.

Tuition and Registration

Tuition is \$4,700; a nonrefundable deposit of \$940 is due upon registration. Tuition includes group meals, local transportation, and reading materials. Lodging is not included in the fee but hotel arrangements are made at a group rate at the Prince de Galles Hotel. Participants are responsible for their own travel arrangements.

The nonrefundable deposit of \$940 is due upon registration; the balance of \$3,760 is due six weeks before the program begins. Brookings accepts MasterCard, Visa, American Express, government training forms, and checks. Credit card charges are made upon receipt of registration form. "No shows" will be charged the full fee.

"Early-bird" discount: If you pay the deposit by April 1, 1993, you will receive a 15% discount off of your total tuition, for a savings of \$700! Please pay the deposit of \$940; your remaining balance will be \$3,060.

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- ☐ Register me for *A Look Inside Policymaking in the European Community*, June 27- July 2, 1993
- ☐ Deposit of \$940 enclosed.
- ☐ Full fee of \$4,700 enclosed
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A Look Inside Policymaking in the European Community

(available Spring 1993)

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PUBLIC POLICY EDUCATION PROGRAMS FOR GOVERNMENT MANAGERS
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'92 SEP 22 10:47

Center for Public Policy Education

September 18, 1992

The Honorable William P. Barr
Attorney Genl of the United States
Department of Justice
10th & Constitution Avenue, N.W.
Room 5111
Washington, DC 20530

Dear Mr. Barr:

Like many people who stay on top of world events, you've probably heard Brookings' name on the news and in the papers. For analyses of public policy issues Brookings has built a reputation for providing balanced, in-depth information to the public. Through our executive education programs we bring our expertise to government executives.

By increasing understanding of public policy formulation and implementation, Brookings programs give senior level government managers like yourself the edge when faced with challenges affecting your policymaking environment.

The Center for Public Policy Education at the Brookings Institution offers you various programs during the upcoming year; you may already be familiar with some of them:

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- Issues in Science and Technology Policy
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Please take a moment to look at the enclosed catalog. For over twenty-five years, our programs have provided valuable insights and networking opportunities.

I hope that you will share this information with others who may be interested in participating. If you have any questions please feel free to contact Joan Milan, Manager of Enrollments at (202) 797-6284.

Sincerely,

Lawrence J. Korb
Director

*The Brookings Institution
Center for Public Policy Education*

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06-03-92 LETTER ATTACHING A COPY OF THE REPORT ON THE
FOURTEENTH SEMINAR ON THE ADMINISTRATION OF JUSTICE
CONDUCTED FOR SENIOR STAFF OF THE THREE BRANCHES ON
MARCH 20, 1992, IN ANNAPOLIS, MARYLAND. ADVISES THAT THE
SESSIONS ON THE CIVIL JUSTICE REFORM ACT AND THE CRIME
LEGISLATION WERE ESPECIALLY VALUABLE. THANKS THE AG FOR
HIS SUPPORT.

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(1) OAG;	06-05-92	(5)		W/IN:
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Center for Public Policy Education

June 3, 1992

'92 JUN -4 P4:17

EXECUTIVE SECRETARIAT

The Honorable William P. Barr
Attorney General of the United States
Department of Justice
Tenth Street and Constitution Avenue, N.W.
Room 5111
Washington, D.C. 20530

Dear Mr. Attorney General:

I am pleased to send you the report on the Fourteenth Seminar on the Administration of Justice conducted for senior staff of the three branches on March 20, 1992 in Annapolis, Maryland.

The three Judicial Fellows did a splendid job of summarizing the five sessions held. The sessions on the Civil Justice Reform Act and the crime legislation were especially valuable and presented some very provocative material.

Thank you again for your support of this effort. I am delighted some 75 senior staffers and others attended and benefitted from the deliberations.

Cordially,

Warren I. Cikins
Senior Staff Member
202/797-6275

Enclosure

cc: Steven R. Schlesinger, w/enclosure

**FOURTEENTH SEMINAR
ON THE
ADMINISTRATION OF JUSTICE**

Sponsored by:

**THE BROOKINGS INSTITUTION
CENTER FOR PUBLIC POLICY EDUCATION**

March 20, 1992

**Governor Calvert House
58 State Circle
Annapolis, Maryland**

**FOURTEENTH SEMINAR ON THE
ADMINISTRATION OF JUSTICE**

March 20, 1992

Summary prepared by Jonathan Entin, Jeffrey Jackson and Janice Sumler-Edmond.

The Fourteenth Seminar on the Administration of Justice, convened by the Brookings Institution, was held in Annapolis, Maryland on March 20, 1992. Since this was the second year of the Congressional term, by design the Seminar attendees generally did not include many principals such as the Chief Justice of the United States or Members of Congress, but the Solicitor General of the United States, four Federal Judges, the Director of the Federal Bureau of Prisons and the Director of the Office of Policy Development of the Department of Justice did attend. A total of 75 senior governmental persons did attend, including 35 from judicial entities, 15 from the Department of Justice, 12 from Congressional committees, and 13 from Brookings, academia, and related organizations.

There were five topics covered at the seminar, as follows:

1. Update on the Implementation of the Civil Justice Reform Act (CJRA), including a Department of Justice Report on their activities on Civil Justice Reform;
2. Long Range Planning Status Report;
3. Report on the Status of Bankruptcy Court Operations;
4. Status of the Crime Bill;
5. Operation of the National Commission on Judicial Discipline and Removal.

This report represents a summary of the day's activities.

Welcoming remarks were given by Warren I. Cikins, Senior Staff Member and Seminar Chair, The Brookings Institution Center for Public Policy Education.

10:00-11:30 a.m.

**UPDATE ON IMPLEMENTATION OF CIVIL
JUSTICE REFORM ACT (CJRA)**

Moderator:

**The Honorable William W. Schwarzer
Director
Federal Judicial Center**

Panelists:

**The Honorable Robert M. Parker
Chief Judge
Eastern District of Texas**

**W. J. Michael Cody
Advisory Committee Chair
Western Tennessee**

**Tracy Nichols
Holland and Knight
Early Implementation Effort
Southern Florida**

**The Honorable Fred Foreman
United States Attorney
Chicago, Illinois**

Implementation of Civil Justice Reform Act:

Judge William W Schwarzer, Director of the Federal Judicial Center, introduced the discussion. He noted that 34 districts are in the process of implementing plans under the Act with an additional 44 more expected to do so by the end of 1992. Judge Schwarzer noted that the Act emphasizes the need for greater case management and control over the discovery process. He pointed to two special aspects of the Act. First, development of local plans for dealing with civil litigation represents something of a departure from the national uniformity provided for under the Federal Rules of Civil Procedure. Rule 83 currently authorizes local rules that are consistent with the Federal Rules, but the CJRA appears to override the uniformity proviso. By authorizing greater local divergence, federal court practice may gradually change. This development may have broader implications for the future of the Federal Rules.

Second, the Act will promote greater communication between the bench and bar. Heretofore, judges have been reluctant to deal directly with lawyers, but the CJRA encourages judges to work more closely with them.

Judge Schwarzer concluded by highlighting several omissions from the Act's purview. First, it focuses on pretrial proceedings only. The CJRA fails to address improving the quality of trials. Moreover, only a minority of federal district judges now engage in trial management analogous to the pretrial case management contemplated in the Act. Second, the CJRA does not address the problem of older cases on the docket. Third, the statutory

provision for mandatory ADR in only 10 districts might inhibit other districts from adopting court-annexed arbitration.

Judge Robert Parker of the Eastern District of Texas provided the perspective of a trial judge. He emphasized that the success of the CJRA will depend largely upon the judges who implement the plans in the various districts, but lamented that judges had little direct input on the statute during congressional deliberations. Consequently, judicial concerns were not fully addressed. In particular, he noted that the Act rests upon three assumptions: (1) that judges do not focus upon the cost of litigation, (2) that judges view lawyers as professionals who act solely in their clients' best interests, and (3) that competition in the marketplace will produce appropriate outcomes. Unfortunately, the last two assumptions are false, and no one talked directly to judges about their role in controlling costs. The CJRA is directed to controlling costs, not to reducing litigation delay. It reflects a willingness to sacrifice accuracy of decisions as part of the price of cost control. Judge Parker expressed some skepticism about the quality of the implementation plans and the length of time it would take to educate the judges affected by the Act.

Tracy Nichols, an attorney from Miami, described the experience of the Southern District of Florida under the CJRA. She observed that the Act was initially greeted with skepticism. However, after eight months under the local implementation plan, that skepticism has abated somewhat.

The local advisory group's first concern was the problem of judicial vacancies. Six of the sixteen authorized judgeships were open when the group began its work. A subcommittee on the process for filling vacancies has been created and has requested that district judges give six months' notice of retirement or application for senior status.

The advisory group next focused on the nature and extent of problems in its district. The group reviewed caseload statistics and studied in depth a sample of approximately 250 cases through interviews with judges and questionnaires to lawyers. The group concluded that no major problems existed in civil litigation in the Southern District of Florida despite the unusually heavy criminal docket. It was therefore decided to forego any massive changes to a reasonably well-functioning system.

The advisory group instead has focused on more modest goals. First, it sought to increase efficiency by five to ten percent, the equivalent of adding one more judge. To accomplish this goal, the group has proposed a new mediation program and a case management system that would limit discovery to three, six or nine months, depending on the nature of the case. This tracking approach would not limit the scope of discovery in any particular case. In

addition, the group proposed that each district judge be given another law clerk. They also devised a plan for more efficient handling of prisoner civil rights cases, which comprise about one-fifth of the civil docket. Under this plan, prisoner cases would be assigned to a single magistrate, and a volunteer pro bono lawyer would be appointed. The advisory group is seeking to facilitate the adoption of an effective administrative procedure for processing prisoner grievances within the state correctional system as a device for diverting these cases from federal court. The advisory group has not completed its work on cost control devices.

Michael Cody of the Western District of Tennessee advisory group indicated skepticism that the problems confronting the federal district courts can be ameliorated by incremental changes in civil litigation. In his view, the main problems arise from the large number of criminal cases and the congestion in state courts. District judges are spending most of their time on cases involving guns, drugs, and other criminal matters. He expressed concern that the traditional functions of the federal courts are being undermined and suggested that greater resources be devoted to improving the state criminal justice system.

Fred Foreman, the United States Attorney for the Northern District of Illinois, gave a contrasting view of the situation in his area. He pointed out that his office has obtained the same number of indictments in each of the last three years but that many of those cases are increasingly complex. These cases, therefore, require greater judicial time and contribute to delay in other areas. Some changes have been made to effect greater efficiency. As a result, the district judges are now above average in their civil dispositions despite the complexity of the criminal docket. At the same time, large criminal trials have required the Northern District to depend more heavily upon visiting judges to assist with other cases. Foreman also noted that he and other United States Attorneys are now implementing various provisions of Executive Order No. 12778 on civil justice reform, including pre-filing a notice of complaint, suggesting settlement and the disclosure of core information, appointment of settlement and sanctions officers, and the promotion of ADR in appropriate cases.

Several points were made in the subsequent discussion. Judge Parker emphasized that the traditional system was lawyer-driven, which in effect meant that the fox had designed the henhouse. The CJRA seeks to move to a court-driven system. He noted, however, the reluctance of lawyers to address the problem of fees.

The latter point led to a question about the billable hour system as the primary means of paying for and delivering legal services. It was noted that there has been a limited movement toward a fee-for-service system. It was also noted that insurance companies and other corporate clients, which, heretofore, have been

the primary proponents of fee-for-service, are now the proponents of the billable hour approach.

Judge Parker noted the bench's mixed reaction to the CJRA due to the insufficient attention paid to educating judges about the Act. Mr. Cody added that the judges who went through the CJRA process in their districts learned much but still remain concerned that the quality of decisions is being sacrificed to the concern for speedy disposition of civil cases.

Mr. Foreman noted that the increasing number of guilty pleas in criminal cases in his district has had a salutary effect on the civil docket.

Judge Schwarzer concluded by observing that the many proposals for civil justice reform demonstrate that the free market in legal services has not been functioning properly.

11:30 a.m.-12:00 noon

**DEPARTMENT OF JUSTICE REPORT ON
THEIR ACTIVITIES ON CIVIL JUSTICE REFORM**

**The Honorable Kenneth W. Starr
Solicitor General of the United States
Department of Justice**

Following the panel presentation, Solicitor General Starr discussed the Justice Department's implementation of the CJRA. He noted particularly the proposals from the Council on Competitiveness and the provisions of Executive Order No. 12778. He also pointed to various forms of outreach to the states to encourage improvements in the state justice systems.

The Solicitor General then turned to a more general discussion of the structure of the federal judiciary. The Supreme Court is now husbanding its resources by reducing the size of its docket. The Court is also working toward shorter and more easily understood opinions.

He then proceeded to outline a normative vision of the lower federal courts. That vision includes small, collegial, albeit ideologically diverse courts of appeals whose members sit frequently with each other. At the district court level, he predicted that an increase in the criminal docket would continue and noted that some efficiency devices are available, including procedures for assigning judges to sit by designation in districts experiencing a temporary increase in caseload. He was less sanguine about the vacancy problem. Due to the greater size of the lower federal courts, we can expect about 100 vacancies at any given time. Last year, the Senate processed 51 confirmations, which was an unusually large number. Where bottlenecks in the system develop, judges can be assigned on a temporary basis.

The Solicitor General concluded by noting the great dissatisfaction with the civil justice system. This problem can be addressed only if the political branches will cooperate without getting into micromanaging the judiciary. In the process, the vision of the good judge will change from someone who is a wise and fair dispenser of justice to someone who is also efficient and managerial.

During subsequent discussion of ADR techniques, the Solicitor General observed that the provision of choices may allow some disputes to be resolved faster and more efficiently. Not all disputes need be handled the same way. At the same time, it is not necessary to mandate any particular form of ADR. These developments, however, will require greater control over lawyers.

One alternative about which the Solicitor General expressed hesitation was an increase in the number of federal judges. He opposed an absolute cap on the size of the judiciary but viewed the creation of new judgeships as a last resort out of concern for the quality and collegiality of the courts and the institutional capacity of the political branches to fill the many vacancies that would constantly exist.

In response to a final question about the role of academics in encouraging frivolous suits, the Solicitor General emphasized the difference between creative lawyering and incompetence. The problems that have generated concern are of the latter variety.

1:00-1:30 p.m.

LONG RANGE PLANNING STATUS REPORT

**The Honorable Otto Skopil
Senior Judge
United States Court of Appeals
for the Ninth Circuit
Chairman, Judicial Conference Committee
on Long Range Planning**

Judge Otto Skopil, Jr., of the Court Appeals for the Ninth Circuit, who is Chairman of the Judicial Conference's Committee on Long Range Planning, discussed recent efforts for judicial improvement. Judge Skopil stressed that for planning in the judiciary to succeed, the Long Range Planning Committee must have continual input from the other branches of government. Judge Skopil suggested The Brookings Institution Conference serves a useful purpose by facilitating inter-branch dialogue.

Judge Skopil noted that planning is not new to the judiciary. The judiciary, like other branches of government, has engaged in the planning process over the years. Examples of judiciary planning are the improved methods for case management, including the recent development of programs for management of mega case bankruptcies. Still other examples include facilities and automation planning. The Magistrates Act also represents successful planning by the judiciary which was subsequently supported by the other branches of government. In that instance, a judicial need was identified and met by the creation of a new judicial office. However, as the Report of the Federal Courts Study Committee noted, much of the judicial planning has been directed toward relatively short-term, operational goals. The rapid pace of change throughout society requires that the federal courts have a greater capacity to anticipate and plan for social changes.

Judges Skopil discussed briefly the work of the Long Range Planning Committee. The Committee's first task is to establish a description (a "vision" in the language of future planners) of what the federal judiciary should look like 20 or 30 years from now. When that vision is established, the Planning Committee may suggest that the Judicial Conference adopt planning goals that will allow the judiciary to become the kind of institution which will best serve our country. The Committee will, of course, involve the other branches of government as well as others within and outside the judiciary in the process of defining what future courts should look like.

Judge Skopil stated that the Committee's second task is to provide planning support to the judiciary including information and education about planning as a process. The Committee will also

provide information, such as workload forecasts, which will be used by judicial planners as their plans are formulated. Using the AO's statistical database and sources outside the judiciary, the Committee will try to identify trends affecting the judiciary. Judge Skopil noted that if the judiciary can identify trends which will affect quantitative and qualitative demands for judicial service, it can plan how best to equip the judiciary to meet these demands. Numerous discernible social and economic trends are underway in this country. Some of these trends can be quantified, such as the aging of the baby-boomers. Other trends, such as evolving societal attitudes towards risk and product safety, are less capable of being quantified, though perhaps no less real. Not all trends involve changes in demands on courts while others will have an obvious impact. An increase in the non-English speaking population would certainly increase demands for court interpreter services.

The third task of the Planning Committee, in cooperation with other Conference committees, is to assess the structure and governance of federal courts to determine whether the existing organizational structure will serve the courts over the long term. There are several potential areas of inquiry here, some of which have been considered by other planning bodies. Do existing circuits need to be realigned? Should there be a single unified circuit court, or a national court of appeals? Should magistrates be used on the appellate level? Will the creation of specialized panels to hear specific types of appeals or the development of specialist trial judges be useful to the judiciary? Judge Skopil noted that such inquiries allow the judiciary to step back from the status quo and ask, but for tradition, would our courts be organized in this manner today, and, in light of future demands, how should they be arranged? These are matters of concern to many in the judiciary, and certainly there is not a unanimous view on any of them. However, Judge Skopil stated that he believes that federal judges, while strong-willed and independent, are dedicated to maintaining our court system's status as the best in the world.

Judge Skopil argued that although federal judges lack autonomy in case selection, judges, as stewards of the federal judicial resource, have a role in informing policy makers of the impact that increasing caseloads have on the court's ability to meet its historic obligations to our country. This is an important but advisory role. Judge Skopil cited the Chief Justice's recent position in the Year-End Report on the Federal Judiciary where the Chief Justice noted the Judicial Conference's concern about two important pieces of federal legislation. One is the Violence Against Women Act, S. 15, the other is the so-called D'Amato Amendment to S. 1241, the Violent Crime Control Act. Both statutes were opposed by the Judicial Conference of the United States.

Judge Skopil stated that the judiciary's concern about both of these measures may be instructive of the judiciary's advisory role

on case selection. The underlying policies of deterring violence against women or deterring homicide through the use of firearms are not opposed in the judiciary. Indeed, the judiciary supports them. Additionally, these subjects are properly matters for decision by the political branches. The judiciary's concern is based on different principles. One is the problem of asking too much of federal courts.

Judge Skopil concluded his remarks by noting that the goal of our long range planning process is to create and maintain a court system capable of deciding cases justly, expeditiously, and with the lowest possible cost to our society. He noted that there will be disagreements as to how best to achieve this goal. The pace of change is slow for courts. However, Judge Skopil noted that the long term problem for the judiciary can be solved, or avoided, with close cooperation among the branches of government. For its role in facilitating the dialogue toward such cooperation, Judge Skopil thanked the Brookings Institution and Mr. Cikins.

Following his remarks, Judge Skopil answered questions from Mr. Warren Cikins and Professor Meador. Mr. Cikins raised the issue of how the Long Range Planning Committee could avoid producing a large volume of recommendations which no one ever reads. Judge Skopil answered that the Committee intends to produce first a plan and then periodic updates to the plan which will be integrated into the operational system of the court. Professor Meador inquired as to whether the Committee had considered including persons from outside the judiciary as members of the Committee. Judge Skopil noted that the issue had been considered, and that the Committee is committed to receiving as much input as it possibly can from persons from within and from without the judiciary.

1:30-2:00 p.m.

REPORT ON THE STATE OF BANKRUPTCY COURT OPERATIONS

Robert Feidler
Legislative and Public Affairs Officer
Administrative Office of the U.S. Courts

William R. Perlstein
Partner
Wilmer, Cutler and Pickering

The state of the bankruptcy courts:

Mr. Feidler discussed briefly the 1978 bankruptcy legislation, which, when proposed, contained provisions found to be objectionable to the judiciary. Former Chief Justice Burger took exception to some of the provisions, and he engaged Griffin Bell to negotiate their deletion. Since the new Bankruptcy Code was enacted, the federal courts have had a surge in filings.

Mr. Feidler offered several statistics on the bankruptcy caseload, and the trends in filings. Seventy-five per cent of all federal cases are bankruptcy cases. One million bankruptcy filings are expected in 1992, compared to 250,000 civil filings and 50,000 criminal case filings. The cost of running the bankruptcy system is \$400 million. Each of the 300 bankruptcy judges handles on average 3,000 cases. Since 1984, case filings have tripled. Every state except Alaska has seen an increase in filings, and eleven states have seen filings increase by 30% or more. Overall, bankruptcy filings doubled in the 1970s and then again in the 1980s. Currently, Mr. Feidler noted, there are ten pending bankruptcy cases involving more than \$10 billion each. The Maxwell bankruptcy is a \$6 billion case involving six countries. The Columbia Gas case is a \$4 billion case. Fifteen to twenty million Americans are involved in bankruptcies as debtors or creditors. The Robbins case alone involved 300,000 creditors. In the asbestos area, the Celotex and Eagle-Pitcher filings each involve 140,000 claimants. There are 14 such cases which may involve an overlap of 130,000 common creditors.

Mr. Feidler also reviewed recent legislation, including the authorization of 32 new judgeships, which will increase the court by 10 percent. The House of Representatives is looking at the trusteeship issue. Further, given the massive number of asbestos cases pending, consideration is also being given to whether there is a bankruptcy solution for those cases. Bankruptcy administration using claimant trust funds reduces the transactional costs.

Mr. Perlstein began by noting the need for balancing the legislative and judiciary interests within the bankruptcy context. He stated that there is a particular problem with mandated mass mailing notices to consumer claimants which most consumers neither read nor understand. He also noted that the bankruptcy system may

be the only judicial system capable of handling massive numbers of claims against limited assets. The need for bankruptcy management of claims is becoming more pronounced as large debtors, such as Eagle-Pitcher and 48 Insulation, run out of insurance proceeds to pay claims.

Mr. Perlstein noted that much of his recent work has been in Florida working on the General Development case. There 200,000 claimants were given actual notice; \$250,000 was spent on world-wide publication. Judge Bristol enforced the bar date, even while noting its harshness, in order to get the case closed.

Mr. Perlstein then addressed the impact of the 1984 bankruptcy amendments which involved among other things the jurisdiction of the district court. He was particularly concerned about district court involvement in the day-to-day work of bankruptcy judges, and in the manner in which appeals to the district court are handled. On the issue of handling appeals, Mr. Perlstein noted that in the LTV case, a \$5 billion case, 14 appeals have been assigned to 11 different judges. On these appeals, counsel is required to educate each new judge about the complexities of the case. Mr. Perlstein noted that two courts, as a matter of course, give all appeals to a single judge. He argued that a single assignment system is needed. Of the 14 appeals in LTV, 11 are still pending.

Mr. Perlstein stated that he wished district courts would refrain from getting involved in bankruptcy matters on a daily basis. In the Robbins case, Judge Merhige solved the Dalkon Shield cases when there was a dispute as to whether the bankruptcy court could hear and decide the tort cases. There is no such dispute now on the authority of the bankruptcy court. Mr. Perlstein suggested that district courts should require a report on every case pending for two years which does not appear to be on track for reorganization. The bankruptcy court should consider at that time: (1) whether the case should be converted; (2) whether a trustee should be appointed; and/or (3) whether the creditors committee or its counsel should be replaced. Mr. Perlstein noted that Judge Merhige appointed the law firm of Fried, Frank to solve the Dalkon Shield claims.

Mr. Perlstein and Mr. Feidler then addressed questions. Judge Schwarzer noted that the large caseload of the bankruptcy courts is much advertised. Although the public thinks this is an astronomical caseload, many of these bankruptcy cases are not cases like those in the district court. There must be 10 to 100,000 cases which should be on an administrative track. Judge Schwarzer also asked whether there should be a statutory restriction on what appears to be exorbitant attorneys' fees. Such a restriction may be an incentive to wrap cases up more quickly. Mr. Perlstein responded that there are many Chapter 13 filings in the bankruptcy court which are small and are handled administratively through standing trustees. However, he added that many cases that count in

the district court's caseload figures are not complicated either. Further, a case like LTV is counted as just one case. On the issue of fees, Mr. Perlstein opposed statutory fee restraints. He noted that fees seem exorbitant because bankruptcy lawyers must get court approval for routine transaction costs such as real estate closings and asset sales which normally would not be considered litigation fees. He cited the LTV case as illustrating that holding back fees does not expedite cases.

Mr. Perlstein further noted that fees are being driven by an increase in fighting between counsel and clients. Clients are getting frustrated and are demanding more lawsuits and more appeals to break what is sometimes perceived as a logjam. Creditors are calling more shots in bankruptcy litigation.

Mr. Bermant, noting first the number of separate filings and hours of district court judging time in the LTV matter, asked whether Mr. Perlstein would favor BAPs [Bankruptcy Appellate Panels]. Mr. Perlstein responded that only two courts (the First and Ninth Circuits) have used the BAP system. He suggested that there be a 5-7 year experiment with BAPs. However, he stated that appeals from BAPs should be to the courts of appeals, and not to the district courts.

2:00-3:15 p.m.

STATUS OF THE CRIME BILL

**The Honorable Vincent L. Broderick
Judge
United States District Court for the
Southern District of New York**

**The Honorable Fred Foreman
United States Attorney
Chicago, Illinois**

Judge Broderick argued that Congress did a tremendous job over ten years in developing a new approach to sentencing. The approach of the Guidelines is an original, thoughtful, carefully modulated, built-in system for developing a common law of sentencing. Similar people committing similar crimes should get similar sentences.

Judge Broderick suggested that as a country we are unwilling to address social and economic problems underneath crime. We look too often for quick fixes. We have bidding wars on sentence proposals. One legislator proposes a five-year mandatory sentence, another must top that by proposing ten years. We need less of this and more prisons.

Judge Broderick described mandatory minimums as the curse of the criminal justice system which aims to do justice. Mandatory minimums make justice impossible. Judge Broderick noted that on behalf of the Conference he is assigned the job of interfacing with the Sentencing Commission. Judge Broderick stated that the Commission has done an excellent job of creating a structure that can grow. Mandatory minimums make it impossible for the Sentencing Commission to do what Congress planned for it to do. Judge Broderick argued that the Sentencing Commission is supposed to prepare a schedule of sentence parity. The Commission looked to the average sentences given by the judicial branch over time as the basis for that schedule. As required by statute, this procedure was to serve as the starting point for the schedules. The Commission found white collar crime to be the one area where the average sentences given were not severe enough.

The statute also requires that judges must depart from the Guidelines in some circumstances when it is necessary to preserve a fair and just criminal justice system. Judge Broderick stated that mandatory minimums make this impossible. Mandatory minimums eliminate the ability to create fair schedules. Mandatory minimums, for instance, apply to everyone caught up in a network. If the government can't get substantial assistance, the minimums can be suspended on motion of the government. But the only person who can give substantial assistance is the director of the criminal enterprise. As it now stands, sentences are disparate and unfair.

Judge Broderick concluded that the Commission will do a good job if only allowed to do so. Simply put, mandatory minimums are pernicious.

Mr. Foreman began his comments by noting that there are other aspects to the Crime Bill. However, he expressed his uncertainty that anything will happen with respect to the bill in the near future. Mr. Foreman then outlined the key components of the Administration's Crime Control Act. They include:

- (1) a federal death penalty, including crimes in the District of Columbia;
- (2) habeas corpus reform;
- (3) codification of recent court opinions on the exclusionary rule which will protect government use of good faith warrantless searches;
- (4) preservation of the harmless error rule;
- (5) proposals on firearms, juvenile crime and anti-gang coordination and strategy.

Coalitions supporting more stringent anti-crime legislation include the DOJ, the National Association of Attorneys General, and the National District Attorneys' Association. The death penalty and habeas corpus proposals have been the most contentious. State prosecutors see habeas as a vehicle for upsetting state court decisions.

Mr. Foreman noted that his office receives frequent communication from the Illinois federal bench on the issue of mandatory minimums. The federal law enforcement officers are in favor of mandatory minimums. Mr. Foreman noted that mandatory minimums arise from the 1960 Chicago cases where light sentences were given by the corrupt judges who were later caught in Operation Greyhound. Those state cases lead to Governor Thompson's support of legislation known as Class X cases, which now include murder cases. Mr. Foreman noted that prosecutors are unfairly criticized for simply enforcing the laws. Further, Sentencing Guidelines take into account the price for witness cooperation.

Thereafter, Judge Broderick and Mr. Foreman addressed questions from the floor. Questions focused on a comparison of the crime rate in the United States and other countries, the need for inter-governmental branch cooperation, and the overlapping interests of state and federal courts.

OPERATION OF NATIONAL COMMISSION ON
JUDICIAL DISCIPLINE AND REMOVAL

The Honorable Robert Kastenmeier
Chairman
National Commission on Judicial
Discipline and Removal

Former Representative Robert W. Kastenmeier, who chairs the Commission, gave an overview of its work. The Commission was created in response to the increase in the number of judicial impeachments since 1986. He explained that Senate Rule 11, which was adopted in 1935 and used for the first time in 1986, allows a committee of twelve Senators to conduct an impeachment trial and report to the full Senate, which then makes the final decision on the charges. Rule 11 has been used several times since despite concerns about its constitutionality (which is the subject of Walter Nixon v. the United States, a case that the Supreme Court recently accepted for review).

The Commission is focusing on alternative forms of removal and less drastic forms of discipline (for example, circuit council proceedings). Representative Kastenmeier pointed out several questions of interest to the Commission. One question is whether the increasing number of impeachments reflects some new development that makes public officials more vulnerable to attack or whether the recent impeachments are a function of the larger size of the federal judiciary. The work of the Justice Department's Public Integrity Section might account for the recent trends in impeachment. Another question involves why judges appear more likely to resist impeachment, even after they have been convicted of crimes. One possible explanation is that there may be disincentives to resign, such as retention of pensions and other benefits.

During the discussion, Representative Kastenmeier observed that a constitutional amendment would be required if the Senate desires to retain impeachment mini-trials if the Supreme Court invalidates Rule 11. He noted, however, that the Commission was established primarily to consider approaches that do not involve impeachment. In this regard, he noted the absence of consensus on the desirability of a constitutional amendment and pointed out that the judiciary would likely resist any proposal that could be construed as a limitation on the tenure protection contained in Article III. He added that no one knows how many judicial impeachment cases there will be. There apparently are two more in process, but projections beyond that are most uncertain. Finally, he noted that members of Congress either attend or are represented at the Commission's meetings, which are open to the public.

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From: CATO INSTITUTE CENTER FOR CONSTITUTIONAL STUDIES, DC
To: AG. ODD: NONE
Date Received: 02-06-92 Date Due: NONE Control #: X92020702068
Subject & Date
UNDATED ANNOUNCEMENT INVITING THE AG TO ATTEND A LUNCHEON
DEBATE ENTITLED, "ARE PROPERTY RIGHTS OPPOSED TO
ENVIRONMENTAL PROTECTION? LUCAS v. SOUTH CAROLINA COASTAL
COUNCIL," FEATURING RICHARD A. EPSTEIN AND JOHN ECHEVERRIA
ON TUESDAY, FEBRUARY 18, 1992, AT 12:00 NOON - 2:00 P.M.
IN THE GRAND BALLROOM OF THE WASHINGTON COURT HOTEL,
525 NEW JERSEY AVENUE, NW, WASHINGTON, DC.

	Referred To:	Date:	Referred To:	Date:	
(1)	OAG;	02-07-92	(5)		W/IN:
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	Sig. For: NONE		Date Released:		MAU

Remarks
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INFO CC: OAG (ANDREWS, SCHATZ).

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6 FEB 92



The Cato Institute's Center for Constitutional Studies
cordially invites you to a Luncheon Debate

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'92 FEB -6 P4:26

Are Property Rights Opposed to Environmental Protection?

EXECUTIVE SECRETARIAT

Lucas v. South Carolina Coastal Council

featuring

Richard A. Epstein

Professor of Law, University of Chicago

and

John Echeverria

Chief Counsel, National Audubon Society

As environmental regulations take hold around the country, property owners are finding they can no longer use their property as they had planned. Accordingly, they are bringing suit under the takings clause of the Fifth Amendment, challenging the government either to abolish the restrictions or to pay for the property taken. This term, the U.S. Supreme Court is hearing several property cases, culminating on March 2 with *Lucas v. South Carolina Coastal Council*, a case that invites the Court to make a definitive statement about the relation between property rights and environmental protection. Join us for a debate about these issues between two experts who have prepared opposing *amicus curiae* briefs in the Lucas case.

Tuesday, February 18, 1992

12:00 noon - 2:00 p.m.

(Luncheon to follow)

Grand Ballroom

Washington Court Hotel

525 New Jersey Avenue, N.W.

Washington, D.C.

Seating Limited

Please Respond Early

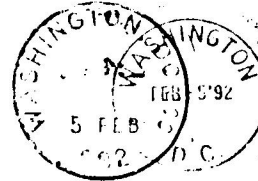
RSVP: (202) 546-0200

Cost \$10 (Lunch plus debate)

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CATO

Mr. William P. Barr
Assistant Attorney General
Department of Justice
10th & Constitution Avenue NW #5214
Washington, DC 20530-0002



DEPARTMENT OF JUSTICE
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From: THE CATO INSTITUTE, WASHINGTON, DC
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Date Received: 01-23-92 Date Due: NONE

Control #: X92012401108

Subject & Date

UNDATED ANNOUNCEMENT INVITING THE AG TO ATTEND A POLICY
FORUM "THE TRANSITION FROM A COMMAND LEGAL SYSTEM TO THE
RULE OF LAW" FEATURING THE HONORABLE BOHDAN A. FUTEY,
JUDGE OF THE U.S. CLAIMS COURT, ON WEDNESDAY,
FEBRUARY 5, 1992, FROM 12:00 NOON - 1:00 P.M. AT THE
CATO INSTITUTE, 224 SECOND STREET, S.E., WASH., DC,
LUNCHEON TO FOLLOW.

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(1)	OAG;	01-24-92	(5)		W/IN:
(2)			(6)		
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23 JAN 92



*The Cato Institute's Center for Constitutional Studies
cordially invites you to a Policy Forum*

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'92 JAN 23 P3:29

The Transition From a Command Legal System to the Rule of Law

EXECUTIVE SECRETARIAT

featuring

The Honorable Bohdan A. Futey

Judge
United States Claims Court

Just as the nations of the former Soviet Union are moving from a command economy to a market, so they must move, if the transition is to succeed, from a command legal system to the rule of law, which is the foundation of a market economy. Judge Bohdan A. Futey, the first Ukrainian-American appointed to a federal judgeship, has made several trips to Ukraine to assist in this process. He is presently in Ukraine and upon his return will discuss with us the issues involved in the legal transition.

Wednesday, February 5, 1992

12:00 p.m. - 1:00 p.m.

(Luncheon to follow)

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From: ROTHKOPF, DAVID, THE CEO INSTITUTE, NEW YORK, NY
To: AG. ODD: NONE
Date Received: 12-17-92 Date Due: NONE Control #: X92121817885
Subject & Date
12-11-92 LETTER REGARDING THE CEO INSTITUTE'S FIRST CEO
RETREAT ENTITLED, "THE CEO IN A WIRED WORLD," FROM
APRIL 28 - MAY 1, 1993, TO BE HELD AT THE LA COSTA RESORT
AND SPA, CARLSBAD, CALIFORNIA. ENCLOSURES PRIORITY
REGISTRATION FORM.

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(1)	JMD;FLICKINGER	12-18-92	(5)			W/IN:
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	INTERIM BY:		DATE:			OPR:
	Sig. For: JMD		Date Released:			EHZ

Remarks
(1) FOR ANY ACTION DEEMED APPROPRIATE.

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DECEMBER 92



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Worldwide Associates

Robert Heilbroner
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The Pacific Institute

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Steven Solarz
U.S. House of Representatives

Sergei B. Stankevich
Political Advisor to the President of Russia

Lawrence Summers
The World Bank

Amb. Andreas van Agt
Commission of the EC to the U.S.

S. Linn Williams
Former Deputy U.S. Trade Representative

92-0917-0357

December 11, 1992

Hon. William P. Barr
Attorney General
Department of Justice
Main Justice, Room 118
Constitution Avenue and 10th St. NW
Washington, DC 20530

Dear Hon. Barr:

We would like to give you an opportunity to spend three days with an exclusive group of America's leading chief executives discussing an issue of central importance to their businesses and yours. In a beautiful retreat setting, this exclusive gathering will also give you the opportunity for informal interaction with other CEOs, and for sharing ideas about the future of your business.

The event is the CEO Institutes first CEO Retreat to be held at the La Costa Resort and Spa in Carlsbad, California from April 28-May 1. As you know, the CEO Institutes are one of the world's leading providers of high level conferences for business and government leaders and are publishers of CEO Magazine.

The focus of this year's event is a subject that every CEO recognizes as crucial to his organization. Yet, it is a subject virtually no CEO has the time to understand. Therefore, each CEO must rely on special interests within and outside his organization to "interpret" it. However, it's a subject which you must understand if you are to ensure your organization's growth and leadership in the future. The subject is information technologies and the La Costa Retreat will be the first program ever devoted to information technology strategies exclusively from the CEO perspective.

Entitled "The CEO in a Wired World," this three day retreat will give you a practical appreciation for new technologies and new ideas about using technology that will cut through the myths and jargon. What is more, the entire program has been designed to change not only the way your company uses technology but the way you use it yourself.

When you check in, you will be given a state of the art laptop computer with color monitor and over \$2500 worth of proprietary software including a new network facility that will permanently link you to other chief executives across America.

You will also have the opportunity to discuss and analyze your company's technology strategies and issues with a personal technology adviser.

The program will feature fellow executives, information technology experts and innovators who have used new technologies to build their businesses and those who are developing the technologies that will change your industry over the next ten years. Appropriately, the entire program will be interactive--from the moment you pre-register--allowing you to request specific topic, themes and speakers be included in the program.

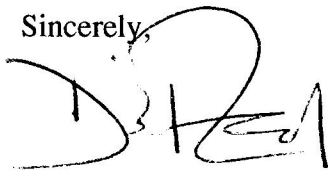
During the course of the retreat, you will have the chance also to meet and exchange ideas with your fellow chief executive delegates, all from companies with annual sales in excess of \$100 million, all sharing your interest and need to know more.

For chief executives who feel ill-at-ease with new technologies, with the technobabble of advisors, or with using technology themselves, this retreat will be a godsend. For those who recognize the importance that remaining current on the latest in computer developments that will effect their operations, it is a necessity.

In two weeks, you will receive a detailed program and registration packet for the event. However, no more than 80 delegates will be accepted for this retreat. So, please use the enclosed form to register. And note: thanks to sponsorship support from Computer Associates, the \$4500 registration fee is actually significantly less than the value of the technology hardware and software you will receive and learn to use as a participant.

We look forward to seeing you at the retreat. If you have any questions however, do not hesitate to call Colleen Gorove, CEO Institutes Program Director at 212-995-9595.

Sincerely,

A handwritten signature in black ink, appearing to read 'D. Rothkopf', written over a horizontal line.

David Rothkopf
Chairman & CEO



— PRIORITY REGISTRATION —

The CEO Institutes 1993 CEO Retreat

“THE CEO IN A WIRED WORLD”

La Costa Resort & Spa

Carlsbad, California

April 28-May 1, 1993

- ☐ YES, Please reserve my place, my check for \$4,500 is enclosed.
- ☐ YES, Please reserve my place, my credit card number is: _____.
- ☐ Amex ☐ Diners Club Expir. Date: _____.
- ☐ YES, Please reserve my place, my check will be sent shortly.*
- ☐ I cannot commit at this time, but would like more information.
- ☐ No, I cannot attend the event.

Name: _____ Position: _____

Spouse/Guest (if attending): _____

Company: _____

Address: _____

_____ Country: _____

Telephone: _____ Fax: _____

Date: _____

Signature: _____

*Attendance is limited; please return by **telefax** at your earliest convenience to:*

The CEO Institutes of International Media Partners

611 Broadway, Suite 300

New York, NY 10012

Telephone: (212) 995-9595

Telefax: (212) 995-9389

**Due to limited space, registration fees must be paid in full by February 15, 1993.*

All checks should be made out to International Media Partners.

(Refunds will not be given after March 26, 1993.)